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## VALUABLE LAW WORKS

PUBLISHED BY

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MARCH, 1882.

**Prideaux's Precedents in Conveyancing.**—With Dissertations on its Law and Practice. *Eleventh Edition.* Thoroughly revised and adapted to the Conveyancing and Law of Property Act, 1881. By FREDERICK PRIDEAUX, and JOHN WHITCOMBE, Esqrs., Barristers-at-Law. *In 2 vols. Royal 8vo. 1882. Price 3l. 10s. cloth.*

**NOTE.**—All the precedents in this edition have been re-modelled, new ones have been added, and the dissertations re-written with reference to the recent Act.

*"The most useful work out on conveyancing."*—*Law Journal.*

**Harris and Clarkson's Conveyancing and Law of Property Act, 1881;** and the Vendor and Purchaser Act, 1874; with Notes and Copious Index. By W. MANNING HARRIS, M.A., and THOMAS CLARKSON, M.A., of Lincoln's Inn, Barristers-at-Law, and Fellows of King's College, Cambridge. *Demy 8vo. 1882. Price 9s. cloth.*

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Contains (1) Introductory Notes on Pleading. (2) Forms of Statements of Claim in Actions on Contracts and Torts, with Notes relating thereto.

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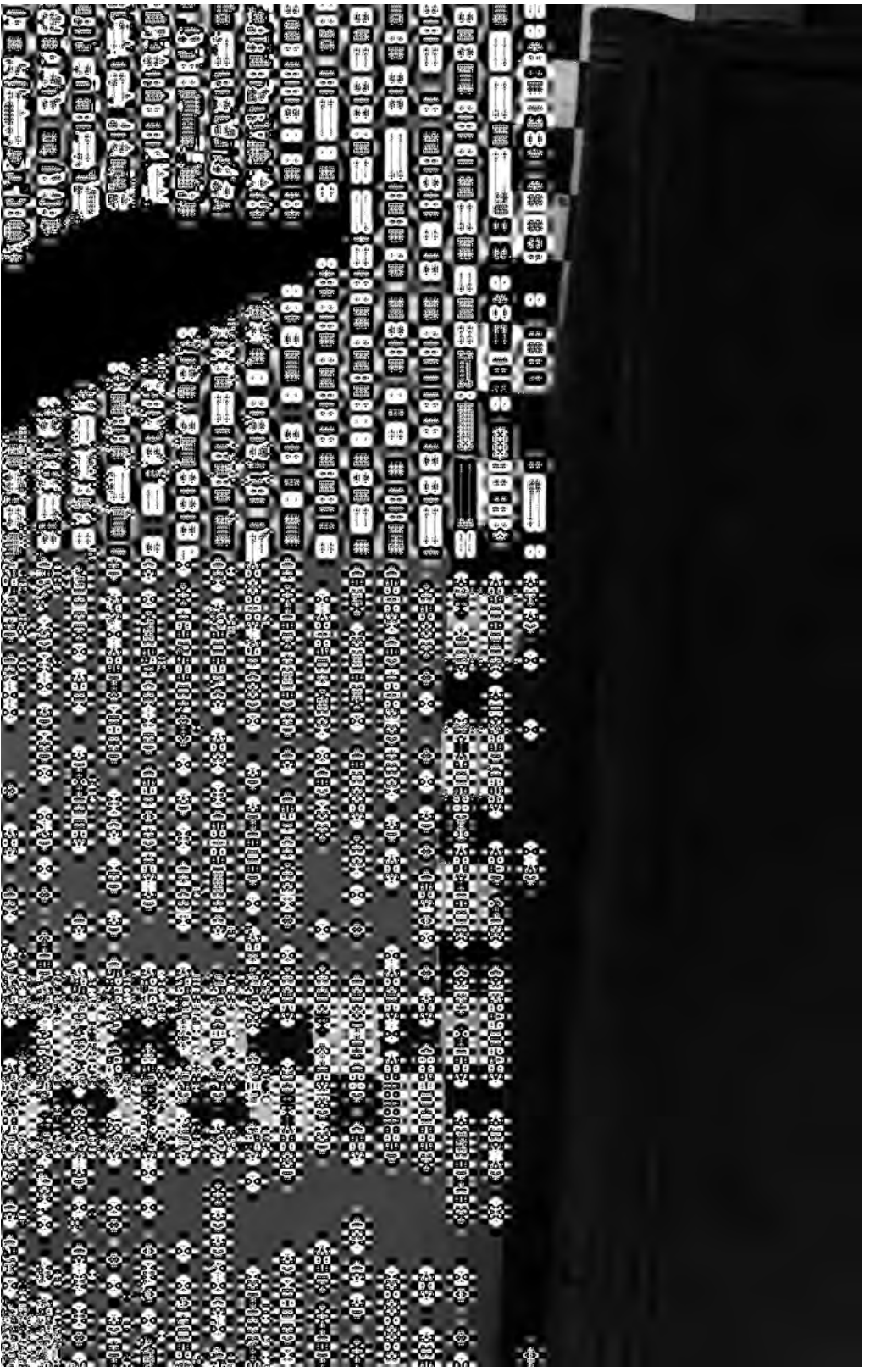


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## PREFACE TO THE SECOND EDITION.

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It must always be a satisfaction to the writer of a law book when the demand for it is sufficient to enable him to keep it abreast of the case law on the subject of which it treats. The preparation of this edition has, however, given me an opportunity not only of incorporating the results of the chief Admiralty decisions since 1878, but also of thoroughly revising and somewhat enlarging the book both in text and appendices; for a careful observation of the work of the Admiralty Court since the first edition was published could not fail to show in what way a second might be made more useful. I have to thank my friend Mr. C. F. Jemmett for assisting me from time to time, and Mr. J. G. Smith, deputy registrar, for information on some points of practice.

E. S. ROSCOE.

1, KING'S BENCH WALK, TEMPLE,  
*February, 1882.*



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## ABBREVIATIONS AND REPORTS.

ABBREVIATIONS.	FULLER TITLES.	DATE.
C. Rob. . . . .	Christopher Robinson's Admiralty Reports, 6 vols. . . . .	1798—1808
Edw. . . . .	Edward's Admiralty Reports, 1 vol. . . . .	1808—1811
Doda. . . . .	Dodson's " " 2 vols. . . . .	1811—1822
Hagg. . . . .	Haggard's " " 3 vols. . . . .	1822—1838
W. Rob. . . . .	William Robinson's Admiralty Reports, 3 vols. . . . .	1838—1850
Spk. . . . .	Spink's Ecclesiastical and Admiralty Reports, 2 vols. . . . .	1852—1855
Swa. . . . .	Swabey's Admiralty Reports, 1 vol. . . . .	1855—1859
Lush. . . . .	Lushington's " " 1 vol. . . . .	1859—1862
Br. & L. . . . .	Browning and Lushington's Admiralty Reports, 1 vol. . . . .	1862—1865
L. R. Ad. . . . .	Law Reports, Admiralty and Ecclesiastical Cases, 4 vols. . . . .	1865—1875
L. R. Ad. D. . . . .	Law Reports, Probate, Divorce, and Admiralty Division . . . . .	1875
L. R. P. C. . . . .	Law Reports, Privy Council Cases . . . . .	
L. J. Ad. . . . .	Law Journal, New Series, Admiralty Court, and, after 1875, Probate, Divorce, and Admiralty Division. . . . .	1832
L. T. N. S. . . . .	Law Times Reports, New Series . . . . .	1860
W. R. . . . .	Weekly Reporter. . . . .	
Jur. . . . .	The Jurist Reports. . . . .	
Moo. P. C. . . . .	Moore's Privy Council Cases. . . . .	
A. C. A. 1861 . . . . .	Admiralty Court Act, 1861. . . . .	
M. S. A. . . . .	Merchant Shipping Act. . . . .	
J. A. 1873 or 1875 . . . . .	Judicature Act, 1873 or 1875. . . . .	
A. C. R. 1859 . . . . .	Admiralty Court Rules, 1859. . . . .	
O. . . . .	Order. . . . .	
R. or r. . . . .	Rule. . . . .	
Asp. Mar. L. C. } or Mar. L. C. }	Aspinal's Maritime Law Cases. . . . .	

### JUDGES OF THE ADMIRALTY COURT SINCE 1800.

William Scott Baron Stowell . . . . .	1798—1828
Sir Christopher Robinson . . . . .	1828—1833
Sir John Nicholl . . . . .	1833—1838
Sir Stephen Lushington . . . . .	1838—1867
Sir Robert Phillimore . . . . .	1867

## ERRATUM.

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Page 49, note 2, line 2, *after* "and" *insert* "by common law the rule contained in it is applicable."

A TREATISE  
ON THE  
JURISDICTION AND PRACTICE  
OF THE  
**Admiralty Division**  
OF THE  
HIGH COURT OF JUSTICE  
AND  
ON APPEALS THEREFROM.

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INTRODUCTION.

THE Court of Admiralty was originally, as its name implies, The origin of the High Court of Admiralty. actually the Court of the Lord High Admiral of England, but by degrees it became, though differing widely in its jurisdiction from the Common Law and Equity Courts, an ordinary municipal tribunal.

Throughout its history, a more or less continuous struggle was carried on between this Court and the Courts of Common Law, to retain, on the one hand, the extensive civil and criminal jurisdiction which it originally claimed, and on the other to lessen or to put an end to its powers. The progress of the struggle, broadly speaking, was to narrow the Admiralty jurisdiction of the Court, until within quite recent times, when by legislative enactments, and from a less jealous spirit on the part of the judges of the Common Law Courts, its jurisdiction has been considerably enlarged. It is only necessary to point to the unfettered exercise of its jurisdiction in cases of personal injuries caused by collisions at sea, and of breach of duty in the carrying of cargo, and of mortgage, as examples of this modern development.

Until the twenty-eighth year of the reign of Henry VIII. 86 the Court of Admiralty exercised a criminal jurisdiction over

offences committed on the high seas, but in this reign it was enacted that such crimes were to be tried by the Lord High Admiral and commissioners in the same manner as offences committed on land; and in the reign of George III. these offences became triable by the ordinary tribunals.<sup>1</sup>

So far as regards its mere general civil jurisdiction, it is not easy to say when the Lord High Admiral's Court became actually established in this country, nor, except for merely antiquarian purposes, is it now of much importance; beginning with a personal jurisdiction on the part of that important officer himself, it became in time a Maritime Court somewhat analogous to those which in the middle ages existed in many seaports of Europe, and even of England.<sup>2</sup> It is certain, however, that so far back as the reign of Edward I. it was a Court not only well known, but jealously watched, for in the twenty-second article of Part C of the Black Book of the Admiralty the following words occur, which have been supposed to show the starting point of the Admiral's jurisdiction in civil matters: "Item, any contract made between merchant and merchant, or mariner beyond the sea, or within the floodmark, shall be tried before the Admirall and noewhere else by the ordinance of the said King Edward and his lords."<sup>3</sup>

From that time various acts of Parliament<sup>4</sup> were passed in order to restrain the jurisdiction of the Court to things done on the sea, and from time to time persons tried to make use of its powers, but were restrained from proceeding by prohibitions issued by the Court of Queen's Bench.<sup>5</sup> Nevertheless the jurisdiction of the Admiralty Court over things done upon the high seas, such as salvage and damage by collision, seems to have

<sup>1</sup> 28 Hen. VIII. c. 15; 39 Geo. III. c. 37; Russell on Crimes, 5th ed., vol. i., p. 10, et seq.

<sup>2</sup> The Black Book of the Admiralty, edited by Sir Travers Twiss, published under the authority of the Lords Commissioners of Her Majesty's Treasury, under the direction of the Master of the Rolls, contains a full account of these tribunals.

<sup>3</sup> Black Book, vol. i., p. 69.

<sup>4</sup> 13 Richard II. c. v.; 15 Richard II. c. iii.; 2 Hen. IV. c. 11; the Black Book of the Admiralty, vol. i., p. 412.

<sup>5</sup> See cases collected, 4th Institute, 134, and criticized by Story, J.; De Lovio v. Boit, 2 Gallison, 398.

been undisputed, whilst, even over some special contracts, such as bottomry, and over other matters, such as suits for wages and necessaries, it with difficulty obtained a jurisdiction concurrently with that exercised by the Courts of Common Law and Equity.<sup>1</sup>

The extent of what may be termed the recognised jurisdiction of the Court at the time when its powers were most fiercely assailed, is well shown by an agreement made at Whitehall on February 18, 1632, in the presence of the King and the Privy Council, to solve, if possible, the difficulties which were continually arising between the hostile Courts of Common Law and the Court of Admiralty. It runs as follows: "1. If suit shall be commenced in the Court of Admiralty upon contracts made or other things Personal done beyond the Seas or upon the Sea; no Prohibition to be awarded. 2. If Suit be before the Admiral for Freight, or Mariner's wages, or for breach of Charterparties, or for Voyages to be made beyond the Seas: Though the Charterparty happen to be made within the realm, so as the Penalty be not demanded, a Prohibition is not to be granted. But if the Suit be for the Penalty, or if the question be whether the Charterparty were made or not; or whether the Plaintiff did release or otherwise discharge the same within the Realm, this is to be tried in the King's Court at Westminster, and not in His Court of Admiralty. 3. If Suit be in the Court of Admiralty for Building, Amending, Saving, or necessary Victualling of a Ship, against the Ship itself and not against any party by name but such as for his interest makes himself a party; no Prohibition is to be granted though this be done within the Realm."<sup>2</sup>

In 1648 and 1649, and during the protectorate of Cromwell, a strong attempt was made to invigorate the somewhat drooping Court; its jurisdiction was enlarged, and three judges were appointed to preside over it.<sup>3</sup> But at the Restoration, the

<sup>1</sup> For a sketch of the wages struggle and the ancient jurisdiction of the Court, see *De Lovio v. Boit*, 2 Gallison, 398; and *Pritchard's Admiralty Digest*, Introduction, 2nd ed.

<sup>2</sup> A view of the Admiralty Jurisdiction, by John Godolphin, LL.D., 2nd ed., 1685, p. 157.

<sup>3</sup> *Scobell's Acts and Ordinances*, c. 112, 1648, c. 23, 1649, 1651, c. 3, 1654, c. 21, 1656, c. 10.



enactments of the Commonwealth were declared void, and from that time until the appointment of Lord Stowell as judge of the Court, in 1798, its jurisdiction was of little practical importance. But the increase of English commerce, and the great reputation of this judge, gradually directed public attention to it, and when, in 1840, an Act<sup>1</sup> was passed to enlarge its jurisdiction, a new field of usefulness was henceforward open to it. Thus claims and causes of action in respect of mortgages when the ship was under arrest, questions of title in actions of possession, and other causes were brought within its jurisdiction.

In 1854<sup>2</sup> came another Act to improve the practice; and three years later, barristers and solicitors, in addition to the members of Doctors' Commons and proctors, were admitted to practise before the Admiralty judge. The jurisdiction already given to it was further enlarged in 1861,<sup>3</sup> in a manner which would have been gratifying to the mediæval civilians who had formerly endeavoured to uphold its powers. Thus in the nineteenth century, the necessities of modern commerce brought to the Court a jurisdiction which the common lawyers had for a long time denied that it could legitimately possess.<sup>4</sup>

The Court of Admiralty is incorporated with the Supreme Court of Judicature, 1873.

The Judicature Act of 1873 effected a very radical change so far as the constitution of the Court is concerned. By the third section of this Act the Court of Admiralty is constituted an integral portion of the Supreme Court of Judicature, to which its former jurisdiction is transferred.<sup>5</sup> But by a subsequent section, the old order of things is to a large extent revived, since one separate division is formed, known as the Probate, Divorce, and Admiralty Division of the High Court, to which are assigned all causes and matters which would have hitherto

<sup>1</sup> 3 & 4 Vict. c. 65.

<sup>2</sup> 17 & 18 Vict. c. 78.

<sup>3</sup> 24 Vict. c. 10.

<sup>4</sup> See the Black Book; Spelman on Admiralty Jurisdiction; Coke's Institutes, Part IV.

The Admiralty jurisdiction conferred from time to time upon the county courts should also not be passed over without notice in regarding the Admiralty jurisdiction of our municipal tribunals from an historical point of view.

<sup>5</sup> J. A. 1873, ss. 3, 16.

been within the exclusive cognizance of the Probate, Divorce, and Admiralty Courts.<sup>1</sup> By the Act of 1875,<sup>2</sup> provision is also made for the hearing in the Admiralty Division of actions of which it has hitherto taken cognizance concurrently with the Courts of Common Law. Thus, except so far as the name and certain parts of the procedure are concerned, the Admiralty Division occupies practically very much the same position as did the old High Court of Admiralty.

The judge of the High Court of Admiralty has hitherto by Royal Warrant exercised in time of war the office of judge of the Naval Prize Court, and his ordinary Court was distinguished from his Prize Court by the name of the Instance Court. But the jurisdiction of the Prize Court in no way has to do with the ordinary jurisdiction of the Admiralty Division of the High Court of Justice, though it must be mentioned in order to keep the ordinary jurisdiction distinct in the reader's mind. Still, should occasion arise, there is no reason to suppose that any other person than the judge of the Admiralty Division will occupy the position of the judge of the Naval Prize Court.

The High Court of Admiralty being originally purely a maritime tribunal, unconnected with the ordinary Courts of the land, administered justice according to the principles of Maritime Law only. That is to say, universal maritime customs, the sea laws, which were recognised by the different maritime countries, more especially as formulated in the celebrated Judgments of the Sea or Laws of Oleron and the Consulate of the Sea, and the civil law, formed the basis of its powers, though as time went on doctrines known to and acted on by the Common Law judges gradually became mingled with its old maritime principles. And this foundation of much of the present Admiralty jurisdiction in the mediæval sea laws is shown with striking force by a comparison of some modern maritime statutes with the famous codes of former days. For the principles upon which actions for damage to cargo are based, as formulated in the Admiralty Court

<sup>1</sup> J. A. 1873, ss. 31, 34.

<sup>2</sup> J. A. 1875, s. 11.

Act of 1861, have their origin in the Customs of the Sea,<sup>1</sup> and the principles which have guided the Admiralty judges of former days, and which have been incorporated in the Merchant Shipping Acts of 1854, can be most unmistakably discerned in the Laws of Oleron,<sup>2</sup> and the provisions of the Amalpitan Table.<sup>3</sup> Thus at the present time the Admiralty Division is guided not only by ordinary municipal law, and by those now well recognised principles of maritime law which have become an actual part of the Admiralty law of this country, but also by general maritime customs or principles more or less common to all nations, so long as they do not directly conflict with the ordinary municipal law and with the decisions of the other divisions of the High Court.<sup>4</sup>

Maritime  
lien.

Perhaps the most important part of the purely maritime jurisdiction of the Admiralty Division is to be found in the doctrine of maritime lien.<sup>5</sup> This, which is unknown to the common law, and is quite distinct from an ordinary possessory lien, is a right to enforce by legal process a claim against the *res* or thing itself, which is either the cause of injury in cases of collision, the object saved by salvors, the vessel on which service has been performed by mariners, or the security for a bottomry bond. It has been judicially defined as "a claim or privilege on a thing to be carried into effect by legal process."<sup>6</sup> If, therefore, a ship has been wrongly injured by another ship, the owner of the first ship has from the date of the collision a lien upon the latter for the amount of damage which he may have sustained. The lien extends to the whole of the ship whilst she remains entire, and to all parts of her if she should be wrecked and broken to pieces.<sup>7</sup>

Extent of  
the lien.

<sup>1</sup> Black Book of the Admiralty, III., p. 92; The Customs of the Sea, Arts. xviii., xix., xx.

<sup>2</sup> Les Costumes D'Oleron, Art. 3, Black Book, II. 213.

<sup>3</sup> Black Book, IV., 13; La Tabula de Amalfa, Art. 1314, et seq.

<sup>4</sup> *The Neptune*, 3 Hagg. 135; *The Saxonía*, Lush. 410; 31 L. J. Ad. 201; *The Patria*, L. R. 2 Ad. 486 (461); 41 L. J. Ad. 23; *The Eliza Cornish*, 1 Spk. 36.

<sup>5</sup> There is no maritime lien in respect of general average claims: *The North Star*, Lush. 45.

<sup>6</sup> *The Bold Buccleuch*, 7 Moo. P. C. 267; 19 L. T. 235.

<sup>7</sup> *The Neptune*, 1 Hagg. 238; *The Reliance*, 2 W. Rob. 19; *The Bold Buccleuch*, 7 Moo. P. C. 267; 19 L. T. 235.

The appurtenances of a ship are subject to this lien: these include not only the ordinary fittings of a vessel, such as the sails and rigging,<sup>1</sup> but also those things which are required for any regular but special service, such as the lines and nets in a fishing boat;<sup>2</sup> as well as accretions in value arising from repairs done subsequent to the inception of the lien by the owner at his own expense, but not those executed by another person on the strength of a bottomry bond on the ship.<sup>3</sup> The lien also covers the whole of the freight which has actually accrued, that is the gross freight, less proper deductions, or deductions which may have been reasonably agreed on between the shipowner and the cargo owner, such as a sum in respect of a part of the voyage not completed at the time when the ship was arrested.<sup>4</sup>

The date of the arrest is in fact (subject to the exception which will be pointed out) the time up to which the freight which is affected by the lien must be calculated; thus where by one charterparty a ship was to proceed from A. to B. with a cargo, and by another made almost contemporaneously was to proceed to B. and there load a cargo and sail to C., and a collision occurred on the outward voyage, the freight payable in respect of the cargo carried from B. to C. was held subject to the lien arising from the collision on the outward voyage.<sup>5</sup> It naturally follows, therefore, if part of a cargo has been removed before the arrest of the ship, that the freight in respect of the whole is liable to contribute to the claim out of which the lien arises.<sup>6</sup>

This liability to the process of the Court which we are now discussing affects not only the original owners of a ship, but those into whose possession it may come subsequent to the date when the lien arises, for it travels with the ship into whatsoever hands she may fall, even into those of a *bonâ fide* purchaser

<sup>1</sup> *The Alexander*, 1 Dods. 278; *The Mellona*, 3 W. Rob. 7.

<sup>2</sup> *The Dundee*, 1 Hagg. 104.

<sup>3</sup> *The Aline*, 1 W. Rob. 111.

<sup>4</sup> *The Leo*, Lush. 444; 31 L. J. Ad. 75; *The Orpheus*, L. R. 3 Ad 348; 40 L. J. Ad. 24.

<sup>5</sup> *The Orpheus*, L. R. 3 Ad. 348; 40 L. J. Ad. 24.

*The Roeliff*, L. R. 2 Ad. 363; 38 L. J. Ad. 56.

Lien may be lost through want of diligence in enforcing it.

without notice of this burden.<sup>1</sup> There is an exception, however, in regard to freight, for a new owner has been held not to be under any liability as regards freight already earned by the ship, since it would be obviously unjust that he should be expected to be bound in regard to freight which the previous owner may have received.<sup>2</sup> But this lien will not be enforced by the Court if due diligence has not been shown by the person in whom the right exists in pursuing his claim. What is or is not due diligence must largely depend on the circumstances of each particular case. It has, however, been defined as "not the doing of everything possible, but the doing of that which under ordinary circumstances and with regard to expense and difficulty could be reasonably required."<sup>3</sup> Again, a delay by which the interests of third parties were injuriously affected would certainly cause the Court to look with less favour on the enforcement of a claim than one which only affected the interests of those who owned the ship at the time when the lien began.<sup>4</sup>

For the purpose of enforcing the lien on the freight, the cargo can be arrested in respect of that which is due for its carriage.<sup>5</sup>

The destruction of the subject-matter of the lien necessarily extinguishes it, as does also the acceptance of a sum whether paid by cash or bill in respect of the claim,<sup>6</sup> or of bail, which is a substitute for the ship.<sup>7</sup> A sale of the ship under the authority of the Court has a similar effect, since here the proceeds of the sale take the place of the vessel.

The enforcement of maritime liens in the winding up of companies.

The arrest of a ship which belongs to a company against which a winding-up order has been issued in the Chancery Division, consequent upon a maritime lien, is void under sec. 163 of the Companies Act, 1862. But the claimant should take out a summons in the Chancery Division asking that the property subject to the lien may be realised or security given for

<sup>1</sup> *The Charles Amelia*, L. R. 2 Ad. 630.

<sup>2</sup> *The Mellona*, 3 W. Rob. 7.

<sup>3</sup> *The Europa*, 2 Moo. P. C. N. S. 1; Br. & L. 89.

<sup>4</sup> *The Bold Buccleuch*, 7 Moo. P. C. 267 (285), 19 L. T. 235; *The Roya Arch*, Swa. 269 (285).

<sup>5</sup> *The Leo*, Lush, 441.

<sup>6</sup> *The William Money*, 2 Hagg. 136.

<sup>7</sup> *The Kalamazoo*, 15 Jur. 886.

the amount alleged to be due. If there are other parties interested, as mortgagees in possession, over whom the Court in the winding up has no jurisdiction,<sup>1</sup> the proper course is to obtain leave from the Chancery Division to proceed in the Admiralty Division against the ship, if the measures above mentioned are insufficient to protect his interests.<sup>2</sup>

Whilst treating of the jurisdiction of the Court it must be pointed out that ships or other public property of a state, used for public purposes, are free from the authority of the Admiralty, or any other municipal tribunal. This immunity arises as a consequence of the absolute independence of every sovereign authority and of the international comity which induces every sovereign state to respect the independence of every other sovereign state. It was at one time considered that this immunity from municipal jurisdiction was the privilege only of ships of war, but there can be no question since the elaborate judgment of the Court of Appeal in *The Parlement Belge*, in which all the authorities on this point are carefully examined, that the exemption is not so narrow, but applies to all the public moveable property of a state which it possesses for public purposes. Further, it appears clear that as soon as a ship is declared by the authorities of a state to be public property which is used for public purposes, such a declaration cannot be submitted to a judicial inquiry, but from international courtesy must be considered as binding on the municipal tribunals, and as ousting their jurisdiction.<sup>3</sup> It is on this same principle that the Admiralty Division will enforce a judgment given against a ship in a foreign country by entertaining an action *in rem*, but the decree of the foreign Court must, in order to give the Court jurisdiction in such an action here, have been clearly given against the *res*.<sup>4</sup>

<sup>1</sup> 25 & 26 Vict. c. 89, s. 163.

<sup>2</sup> *In re The Australian Steam Navigation Co., Ex parte Baker*, 20 L. R. Eq. 525; 44 L. J. Ch. 676; *In re The Rio Grande Do Sul Steamship Co.*, L. R. 5 Ch. D. 282; 46 L. J. Ch. D. 277.

<sup>3</sup> *The Parlement Belge*, L. R. 5 P. D. 197; 42 L. T. N. S. 273; *The Constitution*, L. R. 4 P. D. 39; 48 L. J. Ad. D. 13; *The Charkieh*, L. R. 4 Ad. 59; 42 L. J. Ad. 17.

<sup>4</sup> *The City of Mecca*, L. R. 5 P. D. 28; 49 L. J. Ad. D. 17; 6 L. R. P. D. (C. A.), 106; 50 L. J. Ad. D. 53.

The jurisdiction of the Admiralty is limited equally to British and foreign subjects, and to British and foreign vessels. But the Admiralty is not bound to take account of the fact that between the immediate parties and for the immediate purpose before the Court the Admiralty has always been willing to be guided by some of the principles of the Admiralty jurisdiction in the case of *The Empusa*, where it was held that a vessel was not a British vessel, and to which a special rule was applied in the Admiralty jurisdiction which was a vessel of a foreign country, and was not a British vessel, and a portion of such sum as a bondholder was not entitled to claim on the security of the freight. But the Admiralty Act of 1873 has necessarily, by constituting the Court of Admiralty a portion of the High Court, enlarged its jurisdiction generally, just as it has done that of the Common Law Courts.<sup>1</sup>

*The Empusa*, 2 Dods. 504; *The Don Francisco*, Lush, 468; 31 L. J. Ad. 14.  
<sup>1</sup> *The Empusa*, L. R. 5 P. D. 6; 48 L. J. Ad. D. 36.  
<sup>2</sup> J. A. 1873, s. 24.  
<sup>3</sup> J. A. 1878, s. 5.  
<sup>4</sup> J. A. 1875, s. 8.  
<sup>5</sup> J. A. 1873, s. 77; J. A. 1875, s. 8; 3 & 4 Vict. c. 66. The registrar of the Admiralty Division also acts as the registrar of the Court of Appeal in Admiralty actions.

The jurisdiction, so far as Admiralty business is concerned, conferred on a judge, who is now an ordinary judge of the High Court, appointed by letters patent from the Crown,<sup>4</sup> and who, whenever the next vacancy which occurs is filled up, will have to take his share in the general judicial business of the High Court.<sup>5</sup>

There is, next, the registrar, who is appointed by the judge, and who, in addition to the important judicial duties which he performs in interlocutory applications, and in cases referred to him to ascertain questions of account, acts also as taxing master. In addition there is a deputy-registrar and the chief clerk and his subordinates. Another important official is the marshal and serjeant-at-mace, to whom is intrusted, by himself, his deputies or subordinates, the duty of arresting ships or cargoes; of keeping

<sup>1</sup> *The Juliana*, 2 Dods. 504; *The Don Francisco*, Lush, 468; 31 L. J. Ad. 14.

<sup>2</sup> *The Empusa*, L. R. 5 P. D. 6; 48 L. J. Ad. D. 36.

<sup>3</sup> J. A. 1873, s. 24.

<sup>4</sup> J. A. 1878, s. 5.

<sup>5</sup> J. A. 1875, s. 8.

<sup>6</sup> J. A. 1873, s. 77; J. A. 1875, s. 8; 3 & 4 Vict. c. 66. The registrar of the Admiralty Division also acts as the registrar of the Court of Appeal in Admiralty actions.

them in safe custody; of appraising ships and cargoes when their value is to be officially ascertained; and of unloading and transshipping cargoes. He has also to inquire into the sufficiency of persons proposed as sureties when bail is to be given, and to execute the processes generally of the Court.<sup>1</sup> In many cases, also, Trinity Masters sit with the judge as his assessors; and in references the registrar is assisted by merchants.

A noteworthy change in this department of the division has also been made by the Judicature Act of 1873, by which district registries have been formed, wherein much of the routine work hitherto necessarily performed in London has been transferred to the provinces,<sup>2</sup> since the district registrar has the same powers intrusted to him as are exercised by the registrar of this division.<sup>3</sup>

In regard to appeals from the Admiralty Division, a change of some importance took place in 1873, when the right of appeal to the Privy Council was abolished, and thenceforward appeals from the Admiralty Division were, like those from any other division of the High Court, to be heard by the Court of Appeal.<sup>4</sup> Consequently also a right of further appeal to the House of Lords exists in Admiralty matters under the Appellate Jurisdiction Act of 1876.<sup>5</sup>

<sup>1</sup> J. A. 1873, s. 77.

<sup>2</sup> J. A. 1873, s. 60; and J. A. 1872, s. 13. Liverpool had a district registrar for Admiralty matters for some years previous to this Act, under 33 & 34 Vict. c. 45.

<sup>3</sup> J. A. 1873, s. 62. As to the duties of the registrars, see Part II., O. LIV.

<sup>4</sup> J. A. 1873, s. 18, sub-s. 12.

<sup>5</sup> 39 & 40 Vict. c. 59, s. 3.





## PART I.

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### CHAPTER I.

#### SALVAGE.

SALVAGE in English law is the reward which is earned by those who have voluntarily<sup>1</sup> saved a ship or boat or their apparel or any part thereof, or a ship's cargo or any part thereof, from peril of any kind occurring at sea<sup>2</sup> or on the shores of the United Kingdom,<sup>3</sup> or a wreck from total loss, as by raising it when it has sunk,<sup>4</sup> or who have saved human life,<sup>5</sup> except from a foreign ship out of British jurisdiction. For life salvage alone is rewarded by virtue of statute law and not the general maritime law, and therefore a reward cannot be given in the latter case unless there is an agreement between the country to which the ship belongs and Great Britain that the English Courts shall award salvage for services rendered to the ships of such nation.<sup>6</sup> Salvage is also earned by those who have meritoriously contributed to the safety of property or life, even if their sole efforts

Definition  
of salvage.

<sup>1</sup> *The Neptune*, 1 Hagg. 236.

<sup>2</sup> *E.g.*, life and property from a burning ship: *The Eastern Monarch*, Lush. 81; plunder by savages: *The Lady Worsley*, 2 Spk. 253; the risk of catching fire in dock from burning buildings: *The Tees*, Lush. 505.

<sup>3</sup> M. S. A. 1854, s. 458.

<sup>4</sup> *The Catherine*, 12 Jur. 682; 6 N. of Cas. xliii.

<sup>5</sup> M. S. A. 1854, s. 458; A. C. A. 1861, s. 9.

<sup>6</sup> M. S. A. 1862, s. 59; *The Willem III.*, L. R. 3 Ad. 487; 25 L. T. N. S. 386.

have not effected it,<sup>1</sup> for example, by conveying information of the perilous position of a ship to a steam tug. And even if the services actually rendered have been of no avail, but further useful services would have been performed if they had not been put out of the power of those desirous of giving assistance by those on board the endangered ship, some salvage reward is in that case given.<sup>2</sup> There is, however, one exception to the general rule that services, to entitle those who have rendered them to salvage, must have been successful and have contributed to the safety of property or life, which springs out of contract and is not purely maritime salvage. For if persons are engaged by a vessel in distress to assist her, or are summoned to her aid by signals of distress, and give their services and they are ineffectual, yet if the vessel is ultimately saved, these persons are entitled to some reward, since there has been an engagement and a performance or part performance of an agreed service, not a mere voluntary and unsuccessful effort. Thus, if a vessel at anchor in a gale of wind hails a steamer to stand by her to be ready to take her in tow if necessary, and the steamer complies, but the vessel rides out the gale in safety without her assistance, the steamer would be entitled to some salvage.<sup>3</sup> But as it is the peril which gives rise to the need for help, danger of some kind to person or property is the essential element in and foundation of any salvage service, without which such a service cannot exist.<sup>4</sup> Whether the danger be immediate or remote matters not so long as there is a reasonable possibility of misfortune, all the surrounding

Peril to life or property foundation of salvage.

<sup>1</sup> *The Atlas*, Lush. 518 (527); 15 Moo. P. C. 329; *The Jonge Bastian*, 5 C. Rob. 322; *The E. U.*, 1 Spks. 63; *The Sarah*, L. R. 3 P. D. 39; *The Eintracht*, 29 L. T. N. S. 851; 2 Mar. L. C. N. S. 198.

<sup>2</sup> *The Maude*, 36 L. T. N. S. 26; 3 Mar. L. C. N. S. 308.

<sup>3</sup> *The Undaunted*, Lush. 90; 29 L. J. Ad. 176; *The E. U.*, 1 Spks. 63; *The Nellie*, 29 L. T. N. S. 516; 2 Mar. L. C. N. S. 142; *The Melpomene*, L. R. 4 Ad. 129; 42 L. J. Ad. 45.

<sup>4</sup> *The Mary*, 1 W. Rob. 448; *The Westminster*, 1 W. Rob. 321; *The Bomarsund*, Lush. 77; *The Cairo*, L. R. 4 Ad. 184; 43 L. J. Ad. 33; *The Strathnaver*, L. R. 1 App. Cas. 58; 34 L. T. N. S. 148.

circumstances being considered.<sup>1</sup> But given some peril, the extent of it then becomes one of the elements which has to be considered in estimating the amount of reward which the salvors should receive. Again, by statute a kind of quasi-salvage, that is to say compensation for any labour undertaken, risk incurred, or loss sustained in consequence of the use when not needed of signals of distress, is recoverable in the same way as salvage proper.<sup>2</sup>

The Court has jurisdiction to decide all salvage actions, whether the claims in them are for services performed on the high seas or in the body of a county, or partly in one and partly in the other of these places, or whether a wreck<sup>3</sup> is found at sea or cast on shore, or is partly at sea and partly on the land,<sup>4</sup> and even when an agreement to render salvage services has been made on land.<sup>5</sup> Within certain limits, which are pointed out in the chapter on the County Courts,<sup>6</sup> these tribunals have jurisdiction over actions of salvage. But since the decision of the House of Lords in *Garnett v. Bradley*, the ninth section of the County Courts Admiralty Jurisdiction Act 1868,<sup>7</sup> by which no costs were recoverable without a certificate of the Judge, if the amount awarded did not exceed £300, or the value of the salvaged property £1000, is no longer in force.<sup>8</sup> The County Court limit may, however, be, and indeed usually is, taken into consideration by the Judge in exercising the discretion as to costs which he possesses by Order LV.,<sup>9</sup> and so in practice is still a matter of importance.

<sup>1</sup> *The Charlotte*, 3 W. Rob. 68.

<sup>2</sup> 36 & 37 Vict. c. 85.

<sup>3</sup> Wreck of a ship, and also jetsam, flotsam, and lagan from a ship. See *Palmer v. Rouse*, 3 Hur. & Nor. 505.

<sup>4</sup> M. S. A., 1854, s. 476.

<sup>5</sup> *The Catherine*, 12 Jur. 682.

<sup>6</sup> As to jurisdiction of County Courts, see *post*, Ch. XI. ; and 31 & 32 Vict. c. 71, s. 3.

<sup>7</sup> 31 & 32 Vict. c. 71, ss. 3 and 9.

<sup>8</sup> *Garnett v. Bradley*, L. R. 3 App. Cas. 944 ; 48 L. J. Ex. D. 186 ; and see *Tennant & Co. v. Ellis & Co.*, L. R. 6 Q. B. D. 46 ; 50 L. J. Q. B. D. 143.

<sup>9</sup> See *post*, Pt. II., O. LV.

The High Court has likewise a concurrent jurisdiction with justices of the peace when the property salvaged does not exceed £1000 in value, or when not more than £200 is claimed. The provisions of the Merchant Shipping Acts, 1854 and 1862,<sup>1</sup> so far as they barred the jurisdiction of the High Court in respect of property or claims within these limits, have been repealed by implication by the County Courts Admiralty Jurisdiction Act,<sup>2</sup> so that the remarks already made as to costs in actions within the County Court limits brought in the High Court are applicable to such actions for claims not exceeding £200.

The High Court has, too, concurrent jurisdiction with the Court of the Cinque Ports<sup>3</sup> in respect of any salvage service rendered within their bounds.

The principles which govern salvage awards. Services must be voluntary. Crews of ships in danger.

The principles upon which the Court acts in salvage cases are few and simple.

The services must be voluntary, and not rendered as part of the claimant's legal duty.<sup>4</sup>

The crew, therefore, of a salvaged ship, from the nature of their employment, cannot be entitled to reward,<sup>4</sup> unless their contract of service has been ended by a *bonâ fide* abandonment of the ship at sea for the purpose of saving life,<sup>5</sup> or by their discharge by the master, without fraud on their part, although such discharge was improper on the part of the master. The discharge may also be by the implied order of the master, as when he permanently abandons a vessel with all hands but one, who voluntarily remains on board and afterwards helps to save the ship, and so becomes entitled to rank as a salvor.<sup>6</sup> Neither can

<sup>1</sup> 17 & 18 Vict. c. 104, s. 460; 25 & 26 Vict. c. 63, s. 49 (1).

<sup>2</sup> 31 & 32 Vict. c. 71, ss. 3 and 9; *The Empress*, 3 L. R. Ad. 502; 41 L. J. Ad. 32; *The Hermann Wedel*, 39 L. J. Ad. 30; 23 L. T. N. S. 876.

<sup>3</sup> 17 & 18 Vict. c. 104, s. 460; *The Jeune Paul*, 1 L. R. Ad. 336; 37 L. J. Ad. 11.

<sup>4</sup> *The Neptune*, 1 Hagg. 236.

<sup>5</sup> *The Florence*, 16 Jur. 572.

<sup>6</sup> *The Warrior*, Lush. 476; *The Le Jouet*, 3 L. R. Ad. 534; 41 L. J. Ad. 95.

passengers generally claim salvage, since in a case of common danger they are bound to assist in saving the ship.<sup>1</sup>

Likewise, as a general rule, a pilot is not entitled to salvage reward, except when circumstances which cause great and unusual danger supervene, so as to change the nature of his service from one of ordinary pilotage to one which assists in saving the ship from danger. The work, however, to entitle him to a salvage reward, must consist of some act or acts of a really meritorious character: something more must be done, for example, than merely lending a hand to the crew and assisting them in boisterous weather. A pilot may also be entitled to salvage when he has boarded a vessel which is in danger, and given her his services as a pilot. A ship, it is clear, may be in distress, but so near a port that the mere act of piloting her to her anchorage would not be more than ordinary pilotage service, and it has been recently laid down by the Court of Appeal that the rule by which to test the nature of the service rendered is, whether a fair and reasonable owner and a fair and reasonable pilot, if they had had to come to terms, would have agreed under the circumstances that the service should be performed for ordinary pilotage fees or for salvage reward. Assuming that a vessel is in danger and distress, a pilot who boards her is entitled to say he will only give his services as a salvor, and not as an ordinary pilot.<sup>2</sup>

Generally speaking, a ship's agent will not be entitled to salvage unless the agency and the salvage services are clearly distinguishable, and his work has been of an extraordinary kind, which would not be fairly rewarded by the usual commission. It is often difficult to draw the line

<sup>1</sup> *The Vrede*, Lush. 322; 30 L. J. Ad. 209; *Newman v. Walters*, 3 Bos. & P. 612.

<sup>2</sup> *The Joseph Harvey*, 1 O. Rob. 306; *The General Palmer*, 2 Hagg. 176; *The Frederick*, 1 W. Rob. 16; *The Hebe*, 2 W. Rob. 246; *The Hedwig*, 1 Spk. 19; *The Jonge Andries*, Swa. 226; 11 Moo. P. O. 313; *The Æolus*, 4 L. R. Ad. 28; 42 L. J. Ad. 14; *The Anders Knape*, L. R. 4 P. D. 213; 48 L. J. Ad. 53; *Akerblom v. Price*, L. R. 7 Q. B. (C. A.) 129; 50 L. J. Q. B. D. (App.) 629.

between the two kinds of labour, and therefore the Court does not refuse to entertain claims which prove to be, in fact, for agency, and not for purely salvage services. In one instance, when a firm of ship's agents were engaged to discharge the cargo of a vessel wrecked on a beach, the Court upheld a tender which it considered sufficient, whether the services were in the nature of salvage or agency, not attempting to draw a line between the two kinds.<sup>1</sup>

Queen's  
ships.

As it is the duty of Her Majesty's ships to render assistance to vessels in peril,<sup>2</sup> no claim can be made except for the personal and important services of the officers and crew, and that not without the consent in writing of the Lords of the Admiralty.<sup>3</sup> There is no doubt that officers and seamen in the service of the Crown are entitled to the same amount of salvage in respect of their personal services as other salvors. In the judgment of the Court of Appeal in the case of *The Cargo ex Woosung*,<sup>4</sup> it is stated that, owing to the peculiar position of the officers and sailors in the Bombay marine, they are entitled to such salvage as would be awarded to officers and crews of merchant ships. This implies that generally the men of the royal and mercantile navy are to be rewarded on different principles; but there is no trace to be found in the books of any such distinction, nor does it seem to prevail in practice.

Tugs.

A steam tug or vessel engaged to tow a ship can only

<sup>1</sup> *The Purissima Concepcion*, 3 W. Rob. 181; *The Happy Return*, 2 Hagg. 207; *The Cargo ex Honor*, 1 L. R. Ad. 87; 35 L. J. Ad. 113.

<sup>2</sup> M. S. A. 1854, s. 484.

<sup>3</sup> M. S. A. 1854, s. 485; *The Ewell Grove*, 3 Hags. 209; *The Rapid*, 3 Hagg. 419; *The Rosalie*, 1 Spk. 189; *The Earl of Eglinton*, Swa. 7; *The Alma*, Lush. 378; *The Nile*, 4 L. R. Ad. 449; 44 L. J. Ad. 38; *The Cargo ex Woosung*, 1 L. R. P. D. 260; 44 L. J. Ad. D. 45. When the harbour of Ramsgate and all the property of the trustees thereof became vested in the Board of Trade, it was held that a vessel employed by the Board for harbour purposes was not a Queen's ship: *The Cybele*, L. R. 3 P. D. 8; 47 L. J. Ad. 86 (C. A.).

<sup>4</sup> L. R. 1 P. D. 260; 44 L. J. Ad. D. 45.

claim for services to such ship if she incurs a risk or performs a duty outside the scope of her original engagement, and when she has been freed from the obligations under which she is placed by her original contract, as by a *vis major* or by accidents not contemplated when the contract was entered into.<sup>1</sup> The circumstances of each particular claim must be tested by this rule in order to determine whether towage have been changed into salvage services, which must often be a question of great doubt. Thus, in the leading case of *The Minnehaha*,<sup>2</sup> when a tow rope broke and the ship drifted into a position of great danger, and in rescuing her the tug was injured by being strained, and much manœuvring and extra exertions were necessary, it was held that the tug was entitled to claim an addition to the towage remuneration by way of salvage. The time of year at which the contract is made, and the weather which follows,<sup>3</sup> as a very severe storm, but not simply rough weather, are material elements in considering this question.<sup>4</sup> But if a ship has been brought into a dangerous position by the fault of her tug, and is rescued by her from it, the latter can have no claim to salvage, on the principle that a vessel (so to speak) cannot profit by her own wrong or default.<sup>5</sup> Nor can the tug claim salvage from a third vessel if peril has clearly been caused to her by some fault on the part of such tug in the performance of her original contract.<sup>6</sup> It is on the same principle that if a salvor has rendered her services necessary

<sup>1</sup> *The Princess Alice*, 3 W. Rob. 138; *The Minnehaha*, Lush. 335; 15 Moo. P. C. 133; 30 L. J. Ad. 211; *The Lady Egidia*, Lush. 513; *The Annapolis*, Lush. 355; *The J. C. Potter*, 3 L. R. Ad. 292; 40 L. J. Ad. 9. And see *post*, Chap. II., "Towage."

<sup>2</sup> Lush. 335; 15 Moo. P. C. 133.

<sup>3</sup> *The White Star*, 1 L. R. Ad. 68.

<sup>4</sup> *The True Blue*, 1 W. Rob. 180; *The Albion*, Lush. 282; *The Saratoga*, Lush. 318; *The Galatea*, 1 L. R. Ad. 68; *The J. C. Potter*, *sup.*; *The Strathnaver*, 1 L. R. App. Cas. 58; 34 L. T. N. S. 148.

<sup>5</sup> *The Minnehaha*, *supra*; *The Robert Dixon*, L. R. 5 P. D. 54; 42 L. T. N. S. 344.

<sup>6</sup> *The Annapolis*, Lush. 355.



through her own previous wrongdoing, as by causing a collision between the salved ship and another, or by colliding with her herself, she cannot be allowed any reward for these services,<sup>1</sup> especially as by statute vessels which come into collision are bound to render assistance to each other as far as possible.<sup>2</sup>

Associated  
ships.

When ships sailing together, and in association on a common enterprise and for their common benefit, and under an agreement to render each other assistance, give such help, it is not to be considered in the nature of salvage service.<sup>3</sup> There is no doubt also that a clearly proved custom among traders to a particular place or fishing boats belonging to a particular port gratuitously to give assistance to each other would bar a claim for salvage reward by one of themselves.<sup>4</sup>

Char-  
terers, &c.

As a general rule the charterer of a ship has no right to salvage unless he is for the time being in the position of an owner.<sup>5</sup> Again, if the salving ship or salved property belong to one owner, there can be no claim for salvage services; and the charterer of a ship who has, under the terms of a charter-party, the possession and control over the ship is in the same position as an original owner, if such ship renders service to his property.<sup>6</sup> But this rule does not apply to cases where the charterers of the salved ship are not *pro hac vice* in the position of owners, but are

<sup>1</sup> *The Glengaber*, L. R. 3 Ad. 534; 41 L. J. Ad. 84; *The Cargo ex Capella*, L. R. 1 Ad. 356; 16 L. T. N. S. 800. This rule does not prevent a vessel partly belonging to those who own the wrongdoing ship from recovering salvage, though it would prevent such owners from receiving any part of the salvage reward when it was apportioned. The principle is equally applicable to any other claim arising in consequence of negligent navigation, as one against a cargo owner for a proportion of the expense of raising the vessel, which is clearly an inadmissible demand: *The Ettrick*, 50 L. J. Ad. D. 65; L. R. 6 P. D. 127.

<sup>2</sup> 36 & 37 Vict. c. 85, s. 16.

<sup>3</sup> *The Waterloo*, 2 Dods. 433; *The Zephyr*, 2 Hagg. 43.

<sup>4</sup> *The Swan*, 1 W. Rob. 68; *The Red Rover*, 3 W. Rob. 150; *The Africa*, 1 Spk. 299.

<sup>5</sup> *The Alfen*, Sw. 189.

<sup>6</sup> *The Maria Jane*, 14 Jur. 867; *The Collier*, 1 L. R. Ad. 83.

only ordinary charterers;<sup>1</sup> nor yet to the seamen on board the salving ship, unless their services can be considered as within the scope of their ordinary duties.<sup>2</sup> Neither is it applicable when a cargo on board is saved which belongs to persons other than the owner of the two vessels,<sup>3</sup> nor where the owner or part owner of the salved ship is a co-owner of another, except so far as regards the co-owner in the salved ship.<sup>4</sup>

In determining the amount,<sup>5</sup> if any, of salvage reward to be awarded, which is wholly in the discretion of the Court, there are three chief elements to be considered: (a) the extent of the peril of the object salved; (b) its actual value; (c) the nature of the salvor's services. But a contract, written or verbal,<sup>6</sup> as to the amount of the reward, made either between persons saved, or the owners of, or those having authority over, the salved property, is binding on the parties, and will be enforced by the Court, as to the subject-matter of such agreement,<sup>7</sup> unless it is clearly inequitable<sup>8</sup> from its character or from the circumstances under which it was made, as will be presently mentioned, and unless one of the parties are public officials, who, being bound to render salvage services, for which they will be properly rewarded when they claim in respect thereof, cannot legally enter into a salvage agreement.<sup>9</sup> Every agreement also by which seamen abandon their right to salvage is inoperative,<sup>10</sup> if it is a total abandonment of a

Three elements which entitle to salvage.

Agreements as to amount of salvage.

<sup>1</sup> *The Waterloo*, 2 Dods. 433; *The Collier*, 1 L. R. Ad. 83; *The Scout*, 3 L. R. Ad. 512; 41 L. J. Ad. 42.

<sup>2</sup> *The Sappho*, 3 L. R. P. C. 690; 40 L. J. Ad. 47.

<sup>3</sup> *The Miranda*, 3 L. R. Ad. 561; 41 L. J. Ad. 82.

<sup>4</sup> *The Caroline*, Lush. 334.

<sup>5</sup> See examples at end of chapter.

<sup>6</sup> *The Firefly*, Swa. 240.

<sup>7</sup> *The Mulgrave*, 2 Hagg. 77; *The True Blue*, 2 W. Rob. 176.

<sup>8</sup> *The Enchantress*, Lush. 93; 30 L. J. Ad. 15. As to services outside the terms of the agreement, see *The Boyne* and *The Cadiz*, 35 L. T. N. S. 602.

<sup>9</sup> *The Cargo ex Woosung*, 1 L. R. Ad. D. 260; 44 L. J. Ad. 45.

<sup>10</sup> M. S. A. 1854, n. 182; *The Rosario*, 2 L. R. Ad. D. 41; 35 L. T. N. S. 816; *The Afrika*, L. R. 5 P. D. 192; 49 L. J. Ad. D. 63:

reward which would be due, and not merely an agreement to take a certain sum. This would be a valid contract if it was not vitiated by any of the circumstances which would nullify any other salvage agreement. By the terms of their contract of service, which must be most clearly proved,<sup>1</sup> seamen who engage themselves to a ship to be employed on salvage duty, and in return for their labour agree to receive a fixed and equitable remuneration, will be bound by such an agreement, if it is fair and just.<sup>2</sup>

An agreement will also be set aside by the Court as inequitable unless it is made with fairness and impartiality by both parties, who must from the very nature of such a maritime contract be prepared to take the risk of changing circumstances.<sup>3</sup> Both parties also must be competent to form a judgment as to the obligations arising out of the agreement into which they enter, and there must be a clear understanding as to its nature.<sup>4</sup> The following circumstances will cause agreements to be set aside as inequitable: When the reward is futile and utterly inadequate, or so exorbitant as to be manifestly inequitable;<sup>5</sup> concealment of material facts, that is, of facts the withholding of which would be likely to be injurious to either of the parties to the agreement;<sup>6</sup> powerlessness to resist salvors' demands, so that the agreement is, in fact, made under compulsion;<sup>7</sup> and fraud or corruption of any kind.<sup>8</sup> In all By Maritime Law, see *The Pride of Canada*, Br. & Lush. 208; 9 L. T. N. S. 546.

<sup>1</sup> *The Pride of Canada*, Br. & Lush. 208.

<sup>2</sup> 25 & 26 Vict. c. 63, s. 18; *The Ganges*, 2 L. R. Ad. 370; 38 L. J. Ad. 61. The Court has power in its discretion to set such a contract, like any other, aside, and regards all such agreements very jealously.

<sup>3</sup> *The Waverley*, 3 L. R. Ad. 369; 40 L. J. Ad. 42.

<sup>4</sup> *The True Blue*, 2 W. Rob. 176.

<sup>5</sup> *The Phantom*, L. R. 1 Ad. 58; 14 W. R. 774; *The Theodore*, Swa. 351; *The Silesia*, L. R. 5 P. D. 177; 50 L. J. Ad. D. 9.

<sup>6</sup> *The Canova*, L. R. 1 Ad. 54; 12 Jur. N. S. 528.

<sup>7</sup> *The Cargo ex Woosung*, L. R. 1 Ad. D. 260; 44 L. J. Ad. 45; *The Medina*, L. R. 2 Ad. D. 272; 35 L. T. N. S. 799.

<sup>8</sup> *The Westminster*, 1 W. Rob. 228; *The Crus V.*, Lush. 583; *The Kingalock*, 1 Spk. 265; *The Theodore*, Swa. 351.

cases connected with salvage agreements, the amount of the award is very important evidence in support of the validity or invalidity of such agreements; thus in one case eight shillings and sixpence was held to be so insignificant a reward as to vitiate the agreement; whilst in another £15,000 was considered an unreasonably large sum.<sup>1</sup> The master of a ship can bind his owners by a fair agreement,<sup>2</sup> but not the crew, unless they assent to the agreement at the time or subsequently ratify it.<sup>3</sup> Those who set up such an agreement in an action for salvage must first clearly prove it; after which those who impugn its validity must establish facts sufficient to avoid it.<sup>4</sup>

As regards the elements which are considered in granting a salvage reward, the first is the peril to which the object was exposed. The more imminent the peril, the greater is the reward due to the salvors.<sup>5</sup> But it is now decided that when a vessel is derelict, this fact is only to be considered as an ingredient in the degree of danger to which the property was exposed, all the attendant circumstances, such as the value of the property salvaged and the risk to the salvor, being also duly considered.<sup>6</sup> The old rule, that a moiety of the value of the derelict ship should be given, thus no longer exists; and it has even happened, when the salvors' services have been unusually meritorious, that more than one-half has been awarded.<sup>7</sup> A derelict ship is one which is abandoned without hope of recovery,

The peril  
of the ob-  
ject saved.

<sup>1</sup> *The Phantom*, L. R. 1 Ad. 58; *The Silesia*, L. R. 5 P. D. 177; 50 L. J. Ad. D. 9.

<sup>2</sup> *The Britain*, 1 W. Rob. 40; *The Africa*, 1 Spk. 300; *The Helen and George*, Swa. 368; *The Theodore*, Swa. 357.

<sup>3</sup> *The Sarah Jane*, 2 W. Rob. 110.

<sup>4</sup> *The Salacia*, 2 Hagg. 265; *The Ellen and George*, Swa. 268.

<sup>5</sup> *The Chetah*, 2 L. R. P. C. 205; 5 Moo. P. C. N. S. 278; *The True Blue*, 1 L. R. P. C. 250 (256); 4 Moo. P. C. N. S. 96.

<sup>6</sup> *The Rasche*, 4 L. R. Ad. 127; 42 L. J. Ad. 41; *The Aquila*, 1 C. Rob. 37; *The True Blue*, *sup.*; *The Florence*, 16 Jur. 572 (578); *The Scindia*, 1 L. R. P. C. 241; 35 L. J. P. C. 53.

<sup>7</sup> *The Rasche*, *supra*.

or without any intention on the part of the master and crew of returning to her.<sup>1</sup> It is sometimes a nice question to decide whether a ship is actually derelict if boarded by salvors when the master and crew have left her at anchor near a coast, but the test in such cases seems to be whether the crew left the vessel primarily for the purpose of saving their lives, or of obtaining assistance in their trouble.<sup>2</sup> As Dr. Lushington observes, "A master hardly ever abandons a vessel on the coast without the intention, if he can, to obtain assistance to save his vessel;" and therefore a mere statement to the effect that the crew hoped or wished to or thought of returning is not in itself sufficient to prove that the vessel was not derelict. It is an old element of derelict that the property therein vests *de jure* in the Crown, subject to salvors' rights to remuneration.<sup>3</sup>

When signals are hoisted, their nature is an important element in aiding the Court to arrive at a conclusion as to the degree of peril, if any, in which the vessel was placed. If, however, they are ambiguous, they will be interpreted according to the condition of the vessel which hoists them. Thus, if it is proved in evidence that her state was such as only to require the services of a pilot, the Court will hold that the signal was for a pilot, and not one of distress.<sup>4</sup>

The value. Secondly, the value of the object saved has to be considered: hence life ranks higher than any property, and claims for life salvage have priority to all other claims, even to the extent that the Board of Trade may grant some salvage reward out of the Mercantile Marine Fund when a ship or cargo has been lost, or is insufficient in value to adequately reward the salvors.<sup>5</sup>

<sup>1</sup> *The Aquila*, 1 C. Rob. 37; *The Clarisse*, Swa. 129. A barge adrift in the Thames is not a derelict: *The Zetu*, L. R. 4 Ad. 460; 44 L. J. Ad. 42.

<sup>2</sup> *The Coromandel*, Swa. 205; *The Champion*, Br. & L. 69.

<sup>3</sup> *The Kathleen*, 43 L. J. Ad. 39; 31 L. T. N. S. 204.

<sup>4</sup> *The Hedwig*, 1 Spk. 19; *The Little Joe*, Lush. 88; *The Bomarsund*, Lush. 77; *The Racer*, 30 L. T. N. S. 904.

<sup>5</sup> *The Birtley*, Swa. 198; *The Coromandel*, *ib.* 205; *The Eastern Monarch*, Lush. 81; M. S. A. 1854, s. 459.

As regards property saved, whether ship or cargo, its value forms a most important element in the assessment of the amount which is due to the salvors;<sup>1</sup> but whilst value must be fully regarded, it will not be allowed to raise the amount of reward out of proportion to the peril to which the salvaged object has been exposed, or to the services actually rendered by the salvors.<sup>2</sup> A larger proportion of the value of the property is often awarded to salvors when it is small than when it is large, so as to give them adequate remuneration.<sup>3</sup>

The nature of the salvors' services is the next question to be considered. Their value depends on the peril to life or property which this enterprise causes; the labour, the skill, and the courage shown by the rescuers; the time occupied in the task, and the state of the weather whilst the service was being performed. The value or power of the instruments<sup>4</sup> of the service is also an important ingredient; hence salvage by steamers is rewarded more highly than that by sailing vessels,<sup>5</sup> and large passenger steamers will, on the same principle, be entitled to a greater sum than tugs which are built to assist the progress of other vessels. When loss or damage has happened to a vessel engaged in a salvage service, it is always presumed by the Court that it was caused in such service.<sup>6</sup> Actual losses and expenses incurred or damage sustained by the salvors must be repaid

Nature of  
services.

<sup>1</sup> *The Ewell Grove*, 3 Hagg. 209 (221); *The Industry*, 3 Hagg. 203; *The William Beckford*, 3 C. Rob. 355; *The Glenduror*, 3 L. R. P. C. 589; 24 L. T. N. S. 499.

<sup>2</sup> *The True Blue*, 4 Moo. P. C. N. S. 104; *The Amerique*, 6 L. R. P. C. 468; 31 L. T. N. S. 854.

<sup>3</sup> *The Blenden Hall*, 1 Dods. 414 (421).

<sup>4</sup> *The William Beckford*, 3 C. Rob. 355; *The Eus'ern Monarch*, Lush. 81; *The Fusileer*, Br. & L. 350; 3 Moo. P. C. N. S. 84; *The Glenduror*, 3 L. R. P. C. 589.

<sup>5</sup> *The Kingalock*, 1 Spk. 263 (267); *The Spirit of the Age*, Swa. 286; *The Otto Hermann*, 33 L. J. Ad. 189; *The Palmyra*, 25 L. T. N. S. 885.

<sup>6</sup> *The Thomas Blyth*, Lush. 16.

over and above any mere reward.<sup>1</sup> Thus, where a tug was damaged, and detained in consequence, it was held that she was entitled to a sum both in respect of damage and also for demurrage.<sup>2</sup> But the loss of employment whilst rendering salvage services has been held not to be a certain element of damage.<sup>3</sup> And damages, though separately estimated, are included in the actual award which is made, and form part of it. The possibility or risk of loss must also be duly weighed, as of the loss of insurance by the deviation of the ship;<sup>4</sup> and of fishing profits by a smack;<sup>5</sup> but such possibility must not be too remote. If necessary, the question of damages may be referred to the registrar and merchants.<sup>6</sup>

But the concurrence of all or the absence of any of the above elements, after a full consideration by the Court of the interests of commerce and navigation, since public policy dictates the necessity for giving a liberal recompense to those who engage in so dangerous a service,<sup>7</sup> must be the ultimate test of the value of every salvage service.<sup>8</sup>

Consequences of salvors'

Salvors may by their acts, that is to say, through misconduct, error of judgment, or want of skill, debar them-

<sup>1</sup> *The Salacia*, 2 Hagg. 271; *The Jane*, *id.* 338; *The Spirit of the Age*, Swa. 286; *The James Armstrong*, 4 L. R. Ad. 380; 33 L. T. N. S. 390. Except in the case of ships of the Crown: M. S. A. 1854, s. 484.

<sup>2</sup> *The Mud Hopper*, No. 4; 40 L. T. 462; 4 Mar. L. C. N. S. 104.

<sup>3</sup> *The Cybele*, L. R. 2 P. D. 24; 3 Mar. L. C. N. S. 478.

<sup>4</sup> *The Scindia*, 1 L. R. P. C. 241; 35 L. J. P. C. 53; *The Sir Ralph Abercrombie*, 1 L. R. P. C. 454; 4 Moo. P. C. N. S. 374. It has recently been decided that deviation to save property is not justifiable, but only to save life, and therefore the possibility of loss, whether in regard to the insurance on the ship or by giving a right of action to the owners of cargo against the shipowner, is now a more certain element for consideration than when *The Scindia* and *The Sir Ralph Abercrombie* were decided, since the question was then regarded as doubtful. See *Scaramanga v. Stamp*, L. R. 5 C. P. D. (C. A.) 295; 49 L. J. C. P. D. 674.

<sup>5</sup> *The Houthandel*, 1 Spk. 25; *The Norden*, *id.* 85; *The Saratoga* Lush. 318.

<sup>6</sup> *The Jane*, 2 Hagg. 344.

<sup>7</sup> *Aitchison v. Lohre*, L. R. 4 App. Cas. 755; 49 L. J. Q. B. D. 123. This case decided also that salvage does not fall within the suing and labouring clause of a policy of insurance.

<sup>8</sup> *The Clifton*, 3 Hagg. 120; *The Industry*, *ib.* 208; *The William Beckford*, 3 C. Rob. 355; *The Glenduror*, 3 L. R. P. C. 592.

selves from receiving a part of the reward to which they would be otherwise entitled.<sup>1</sup> Although this is usually called forfeiting part of the reward, it is in reality the diminishing of the reward owing to the presence of certain facts, just as a smaller sum might be payable if the weather were calm than if it were stormy.

Salvors may also in extreme cases forfeit the whole reward; but misconduct when success has been finally achieved, in order to cause a total forfeiture, must be conclusively shown, by the parties who rely upon it, to be wilful and almost criminal, and not a mere error of judgment.<sup>2</sup> Thus when smacksmen who were trying to save a vessel raised a riot and resisted the employment of a steamer, it was held that they had lost their claim to any reward at all.<sup>3</sup> If it does not reach this degree of wrongfulness it will only lessen the amount of the reward.<sup>4</sup> It has also been held that in cases of gross negligence the reward may be totally forfeited; but the true reason for this appears to be that greater injury has been done to the vessel saved by the conduct of the salvors than she would have suffered without their intervention, or that the injury caused by them exceeds the value of their services. In *The Neptune*,<sup>5</sup> a vessel in distress was by the error of the salvors run aground, and so placed in greater peril than that from which she was being rescued; and in *The Duke of Manchester*,<sup>6</sup> the actual injury sustained and the most imminent danger from which she was rescued were caused by the salvors' negligence. In *The C. S. Butler*,<sup>7</sup> there was an action of salvage and a cross-action by the owners of

<sup>1</sup> *The Duke of Manchester*, 6 Moo. P. C. 91; 2 W. Rob. 470; *The Neptune*, 1 W. Rob. 297.

<sup>2</sup> *The Charles Adolphe*, Swa. 153; *The Atlas*, Lush. 518 (528); 15 Moo. P. C. 329.

<sup>3</sup> *The Martha*, Swa. 489.

<sup>4</sup> *The Atlas*, *sup.*; *The Magdalen*, 31 L. J. Ad. 22; 5 L. T. N. S. 807.

<sup>5</sup> 1 W. Rob. 297.

<sup>6</sup> 6 Moo. P. C. 91; 2 W. Rob. 470.

<sup>7</sup> 4 L. R. Ad. 178; 43 L. J. Ad. 17.



the salvaged ship against the salvors for damage, and it was held that though the salvors were entitled to receive a certain sum, the owners had also a right to recover their damages. Therefore, if owners raise a counterclaim or set-off for damage caused, even by an error of judgment on the part of the salvors, the balance may possibly be in their favour. And since the master of a ship has a general authority to assist vessels in distress, his owners are liable for the damage caused in the course of such service.<sup>1</sup>

It is a simple question of fact as to what acts will be regarded as falling within the term misconduct, or want of skill or error of judgment, so as to work a forfeiture of salvage. But they have been held to include the non-delivery of wreck<sup>2</sup> to Receiver of Wreck; improper retention of property;<sup>3</sup> unlawful obtrusion of assistance.<sup>4</sup> Yet, as regards this last matter, if a vessel is derelict and abandoned, without any intention of return by the master and crew, the first band of salvors have a full legal right to remain solely in possession of the wreck; if they are wrongfully dispossessed by a second band who bring the ship into safety, the latter will lose all claim to a reward;<sup>5</sup> but a second band, if the first have abandoned the wreck, possess all the rights of first comers.<sup>6</sup> There must also be included within this class improper refusal of further assistance, the test of the propriety or impropriety of such refusal being whether or not such further assistance was required to ensure the safety of the imperilled property;<sup>7</sup>

<sup>1</sup> *The Thetis*, 2 L. R. Ad. 365; 38 L. J. Ad. 42.

<sup>2</sup> M. S. A. 1854, s. 450. This section does not apply to the case of a barge in the Thames delivered to owner: *The Zeta*, 4 L. R. Ad. 460; 44 L. J. Ad. 42.

<sup>3</sup> *The Lady Worsley*, 2 Spk. 255.

<sup>4</sup> *The Barefoot*, 14 Jur. 841; *The Glasgow Packet*, 2 W. Rob. 306 (313); *The Champion*, Br. & L. 69.

<sup>5</sup> *The Champion*, Br. & L. 69; *The Blenden Hall*, 1 Dods. 414; *The Kathleen*, 2 Asp. Mar. Cas. N. S. 367; 31 L. T. N. S. 204.

<sup>6</sup> *The India*, 1 W. Rob. 406; *The Clarissa*, Swa. 12.

<sup>7</sup> *The Maria*, Edw. 177; *The Dossutei*, 10 Jur. 865; *The Pickwick*, 16 Jur. 670; *The Dantzic Packet*, 3 Hagg. 385; *The Glasgow Packet*, id. 306

unnecessarily taking a vessel to an inconvenient port, unless it were done to prevent a deviation from the course of the salvors' ship; <sup>1</sup> neglecting to afford prompt help, <sup>2</sup> as well as exorbitant demands <sup>3</sup> before giving such aid; and an error of judgment as to the harbour to which the ship is taken, if injury is thereby caused. <sup>4</sup>

As to the apportionment <sup>5</sup> of the salvage reward, there is no fixed proportion of the sum awarded to be allotted to the various classes of salvors, and the amount to be given to each person is entirely in the discretion of the Court, according to the circumstances of each particular case. <sup>6</sup>

The most common division of the several classes of salvors is into (a) the officers and crew of a ship; (b) persons who assist other than the above; (c) the owners of a ship.

When some of the crew of a salving ship are put on board a ship in distress, or when the service consists simply in the loan of one or more mariners, those left on board the salving ship and her owners are entitled to share in the apportionment of the reward, according to the increase of their labour or of the risk to them and to the ship by reason of her being short-handed, <sup>7</sup> but to a less amount than those who have left it, especially if the imperilled ship has been in great danger, <sup>8</sup> or the lives of those placed on board have been much in peril. It is on this principle that when a mariner goes on board a vessel in which the crew are or

<sup>1</sup> *The Esperance*, 1 Dods. 48; *The Orbona*, 1 Spk. 161; *The Martin Luther*, Swa. 287.

<sup>2</sup> *The City of Edinburgh*, 2 Hagg. 333.

<sup>3</sup> *The John and Thomas*, 1 Hagg. 157, n.

<sup>4</sup> *The Perla*, Swa. 230.

<sup>5</sup> See some examples of apportionment at the end of the chapter.

<sup>6</sup> *The Thetis*, 3 Hagg. 14 (62).

<sup>7</sup> *The Nicolina*, 2 W. Rob. 175.

<sup>8</sup> *The Jane*, 2 Hagg. 338; *The Sarah Jane*, 2 W. Rob. 110 (115); *The Roe*, Swa. 84; *The Saint Nicholas*, Lush. 29; *The Charles*, 3 L. R. Ad. 536; 26 L. T. N. S. 594; *The Golindrina*, 1 L. R. Ad. 334. But not on a light ship: *The Emma*, 3 W. Rob. 151.

have been suffering from an infectious disorder he is entitled to a very considerable reward. Thus, a mate was placed on a ship on which the master's wife and the chief mate had died from yellow fever, and the second mate and two seamen were ill from the same disorder, and the master was sick and weak, and he navigated her for 3000 miles for more than forty days with only six hands. The property saved was of the value of £5135, and salvage to the amount of £900 was awarded; this chief salvor received of that sum £600, the master of the vessel which he left £50, the crew £150, and the owners £100.<sup>1</sup>

The salvage reward which has to be divided among the officers and men will generally be distributed according to their rating,<sup>2</sup> unless some individuals have performed more meritorious services than the others,<sup>3</sup> when they may receive double or treble shares.<sup>4</sup>

Persons who assist are generally rewarded on a less liberal scale than seamen,<sup>5</sup> unless they are of a superior station or of great capacity.<sup>6</sup>

Owners.

The amount to which the owners of a salving ship are entitled depends upon the risk to which she has been exposed in consequence of rendering help to an imperilled object, the value of such help, her actual pecuniary value, and that of the cargo which she carries.<sup>7</sup> The introduc-

<sup>1</sup> *The Skibladner*, L. R. 3 P. D. 24; 47 L. J. Ad. D. 84.

<sup>2</sup> *The Earl Grey*, 3 Hagg. 363; *The Columbine*, 2 W. Rob. 186; *The Two Friends*, id. 353; *The Martin Luther*, Swa. 290; *The George Dean*, id. 291; *The Enchantress*, Lush. 96; 30 L. J. Ad. 15.

<sup>3</sup> *The Hope*, 3 Hagg. 423; *The Albion*, id. 254; *The Golendrina*, 1 L. R. Ad. 334.

<sup>4</sup> E.g., *The Cleopatra*, L. R. 3 P. D. 145; 47 L. J. Ad. 72.

<sup>5</sup> *The Salacia*, 2 Hagg. 269; *The Hope*, 3 Hagg. 425 (passengers); *The Perla*, Swa. 230.

<sup>6</sup> *The Nicholas Witzzen*, 3 Hagg. 369 (pilot); *The Tees*, Lush. 505; 7 L. T. N. S. 257.

<sup>7</sup> *The Perla*, Swa. 232. £1500 to owners, £500 to the master, £800 to crew: *The Enchantress*, Lush. 96; 30 L. J. Ad. 15; *The Howard*, 3 Hagg. 256, n.; *The Palmyra*, 25 L. T. N. S. 894. And see "Instructions of Board of Trade to Receivers of Wreck," App. III., and p. 25, ante, and cases in note 5.

tion of steam has considerably raised the proportion of the reward which is allotted to the owners. As in the majority of cases the chief risk and expense is incurred by the owners, and the chief service is performed by their vessel,<sup>1</sup> a not uncommon proportion for the owners to receive is one-half of the whole reward.

When several bands of salvors are entitled to participate in the reward, the amount to be allotted to each is in the discretion of the Court; but the rule naturally is that it should be apportioned according to the value of the services which each set of salvors may have rendered.<sup>2</sup>

The apportionment among several salvors, when the services have been rendered within the United Kingdom, if the amount finally ascertained to be due, by agreement or by the award of justices, does not exceed £200, and disputes arise as to the apportionment, may be made by the Receiver of Wreck for the district, on the application of the parties liable to pay the same, who will first give the amount awarded to the Receiver, and receive a certificate of payment from him.<sup>3</sup>

If the amount exceeds this sum, or the services have been rendered outside the United Kingdom, any Court having Admiralty jurisdiction may then apportion the amount which has been finally ascertained in such a manner as it thinks right and just.

Salvors have a maritime lien on the property saved.<sup>4</sup> Where ship, cargo, and freight are saved, each must con-

<sup>1</sup> *The Enchantress*, Lush. 96.

<sup>2</sup> For examples of apportionment, *The Jonge Bastian*, 5 C. Rob. 322; *The Albion*, 2 Hagg. 255; *The Charlotte*, *id.* 361; *The Queen Mab*, 3 Hagg. 241; *The Pride of Canada*, Br. & L. 209; *The Undaunted*, Lush. 90; 29 L. J. Ad. 176; *The England*, 2 L. R. P. C. 253; 38 L. J. Ad. 9; *The Eastern Monarch*, Lush. 81; *The Andrina*, 3 L. R. Ad. 286; 28 L. T. N. S. 488 (derelict).

<sup>3</sup> M. S. A. 1854, ss. 466, 467. As to the manner of distribution, see "Instructions of the Board of Trade to Receivers of Wreck," *post*, App. III.

<sup>4</sup> *The Eleanora Charlotte*, 1 Hagg. 156; *The Gustaf*, Lush. 506. As to maritime lien and its incidents, see *ante*, p. 6.

tribute its share of the salvage reward in proportion to its value:<sup>1</sup> an impression that bullion is an exception to this rule has recently been decided to be erroneous.<sup>2</sup> Where lives on board a ship are saved, there is a lien on the ship, cargo, and freight in respect of the reward due for such service. But if the ship be lost and only the cargo or part of it is saved, the amount of salvage awarded in respect of the saving of life has to be borne by the property which has also been saved, for the liability to pay attaches only to property saved, and is not a personal liability on the part of the owners of the lost vessel.<sup>3</sup>

The value of the property for salvage purposes is taken to be its value at the port where the salvors' services end.<sup>4</sup> In the case of freight, it has been held that, even though as between shipowner and cargo-owner no freight has become due at this port, yet, that as services have been rendered in respect of a portion of the freight which is ultimately payable, the value must be roughly reckoned as the proportion finally due for the voyage as far as the port of safety, if that is not the terminus of the whole voyage.<sup>5</sup> When there is a disagreement as to the values, a commission of appraisement should be taken out (for procedure, see Part II.); but when it is only a question whether certain deductions may legally be made, a commission of appraisement is unnecessary.<sup>6</sup> In practice, affidavits of value which differ are often brought into Court, and the values then agreed upon by counsel.

In addition to the ordinary maritime lien enforceable by the process of the Admiralty Division, there exist also

<sup>1</sup> *The Westminster*, 1 W. Rob. 233; *The Emma*, 2 W. Rob. 319; *The Pyrennee*, Br. & L. 189; *The Longford*, L. R. 6 P. D. 60; 50 L. J. Ad. D. 28.

<sup>2</sup> *The Longford*, *supra*.

<sup>3</sup> *The Fusileer*, Br. & L. 341; *The Cargo ex Schiller*, 2 L. R. Ad. D. 145; *The Cargo ex Sarpedon*, L. R. 3 P. D. 28; 37 L. T. 505.

<sup>4</sup> *The Stella*, L. R. 1 Ad. 340; 36 L. J. Ad. 13; *The George Dean*, Swa. 290.

<sup>5</sup> *The Norma*, Lush. 124; *The James Armstrong*, L. R. 4 Ad. 380.

<sup>6</sup> *The Charlotte Wylie*, 5 N. of Cas. 6.

certain statutory provisions which are of some importance. Briefly summarized they are to this effect. Whenever any salvage is due to any person under the Merchant Shipping Acts, the Receiver of Wrecks may detain the property saved until payment is made or a process issued by the Court, unless security is given, when he may release the property.<sup>1</sup> If the claim exceeds £200, the Admiralty Division may determine any question concerning the amount of security, and proceedings may also be taken in the Court to settle the question as to the amount of salvage which is due.<sup>2</sup> Moreover, whenever any property is detained by a Receiver for non-payment of any sums due for salvage, and the parties liable to pay are aware of the detention, if the sum is (a) undisputed, and payment is not made within twenty days, or (b) if it is disputed, but no appeal lies from the first tribunal to which the dispute is referred, and payment is not made within twenty days after the decision of this tribunal, or (c) if the amount is disputed, and appeal proceedings are not instituted or payment made within twenty days, the Receiver may sell the property, or a sufficient part thereof, and from the proceeds pay to those entitled the amount of their salvage reward, and all attendant expenses, and hand over the surplus to those who may have a right to it.<sup>3</sup>

Again, in the case of one of Her Majesty's ships, or in that of any other ship, if the salvor in this last case is willing to abandon his lien, the master or person in charge of the salvaged ship may agree to abide by the judgment of a competent Court, and give security for such an amount as may be settled between the parties, and such agree-

<sup>1</sup> By M. S. Amendment Act, 1862, s. 50, the Receiver, on the application of either party, may appoint a valuer to value the property, and after it has once been released it cannot be detained by the salvors. *The Lady Catherine Braham*, Lush. 404; 5 L. T. 693.

<sup>2</sup> M. S. A. 1854, s. 468; App. I.

<sup>3</sup> M. S. A., 1854, s. 469; App. I.

ment shall bind the ship, her cargo and freight, and their owners.<sup>1</sup>

There is also a series of provisions as to the enforcement of salvage by Her Majesty's ships which are contained in the Merchant Shipping Act, 1854;<sup>2</sup> these are voluntary and do not prevent a salvor from proceeding by the ordinary machinery. They will be found at length in Appendix I.

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*Examples of Salvage Awards and Apportionments.*

I.—SERVICE.	AWARD.	APPORTIONMENT.
<i>Life—Property—Life-Boatmen and Shoremen.</i>		

<p>The iron ship <i>Glenduror</i>, 994 tons, at 8 p.m. on an evening in February, came stem on to the shore, having parted her cables in a very severe gale which was then blowing. The life-boat was manned with the help of some 60 or 70 persons, and rescued 29 persons from the <i>Glenduror</i>. For a week all these persons and other boatmen were engaged in landing and warehousing cargo, and lightening the ship, which was got off and brought to London. Value of ship, cargo and freight, £46,000. Tender, £500.</p>	<p>£2000.</p>	
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*The Glenduror*, L. R. 3 P. C. 589.

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II.—SERVICE.	AWARD.	APPORTIONMENT.
<i>Derelict—Mid Ocean.</i>		

<p>Ship <i>Craigs</i>, 1148 tons, with cargo of pitch pine, abandoned by crew, found by s. a. <i>Teutonia</i> in North Atlantic Ocean on 25th February, lat. 48° N., long. 27° W., 800 miles W. of Queenstown, wind N.E.,</p>	<p>£2300</p>	<p>Owners £500 (to cover all expenses), master, £100, £150 to crew of <i>Teutonia</i> who remained with her, £1500 among crew</p>
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<sup>1</sup> M. S. A. 1854, s. 497.

<sup>2</sup> M. S. A. 1854, ss. 486—496

SERVICE.	AWARD.	APPORTIONMENT.
heavy swell, ship disabled, 4 ft., 6 in. water in hold. <i>Teutonia</i> screw s. s. 2693 tons, with general cargo and horses. Crew, 52 hands. First mate and boat's crew go to ship and return. 6 a.m., <i>Teutonia</i> steams to <i>Craigs</i> ; 7.30, begins to tow; 10.15 a.m., casts off, and proceeds on voyage, leaving mate and 4 A.B.'s on <i>Craigs</i> . March 31, <i>Craigs</i> arrives at Queenstown after very heavy weather and great danger of loss. Value of <i>Craigs</i> and cargo more than £5000. Tender, £1800.		who sailed the <i>Craigs</i> according to their rating.
<i>The Craigs</i> , L. R. 5 P. D. 186.		

III.—SERVICE.	AWARD.	APPORTIONMENT.
<i>Pilotage—Ship slightly injured near Coast.</i>		
Swedish s. s., <i>Anders Knape</i> , 401 tons register, had been aground near Long Sands, and injured her rudder, weather hazy, fresh breeze, considerable sea; smack <i>Faith</i> comes up and the master goes on board and agrees to pilot the <i>Anders Knape</i> to Harwich, which is done. Her value was £2335.	£30.	
<i>The Anders Knape</i> , L. R. 4 P. D. 213.		

IV.—SERVICE.	AWARD.	APPORTIONMENT.
<i>Salvage supervening on a Towing Contract—Ship—Tug.</i>		
<i>The J. C. Potter</i> , a ship of 1244 tons, with a valuable cargo of rice, bound for Liverpool, fell in with the <i>Retriever</i> , a tug valued at £11,000, with engines 650 actual horse power, off the Smalls, on the morning of October 11, the weather being fine and wind moderate. The <i>Retriever</i> agreed to tow the <i>J. C. Potter</i> to Liverpool for £45, and began her contract at 11 a.m. October 12, 6 a.m., a heavy gale suddenly sprung up, and by 11 a.m., was blowing	£500.	



SERVICE.	AWARD.	APPORTIONMENT.
with extraordinary violence. By 5 p.m., ship and tug were drifting to the West Hoyle Bank. Midnight, the crew of the tug asked the master to cast off the tow, when there was peril of the loss of both tug and tow. 4 a.m., on October 13, wind moderated, and it became possible to make some progress to windward. Repairs to brig cost £144. Salvage services lasted from 11 p.m. to 2 a.m., value of ship, freight and cargo £20,000.		

*The J. C. Potter*, L. R. 2 Ad. 292;  
40 L. J. Ad. 9.

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V.—SERVICE.	AWARD.	APPORTIONMENT.
<i>Life—Property—River—Tugs—Bullion.</i>		
S. s. <i>Longford</i> , 1000 tons gross, 476 nett tons register, with a general cargo, 162 passengers, and 182 cattle, specie value of £50,000, was injured by collision in the Mersey, began to fill with water. The tug <i>Mersey King</i> towed her to the wall, where she was beached. <i>The Rover</i> took passengers and luggage, <i>The Knight of Malta</i> , <i>Rover</i> and <i>Royal Alfred</i> took the cattle. Total value of property proceeded against £72,000.	£1200.	£300 to each tug.

*The Longford*, L. R. 6 P. D. 60;  
50 L. J. Ad. D. 28.

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VI.—SERVICE.	AWARD.	APPORTIONMENT.
<i>Mail and Passenger Steamer—Towage by Steamer.</i>		
<i>The Brazilian</i> screw s. s. 9495 tons gross, 2284 tons nett register, 350 nominal, and 1850 indicated horse power, from Boston to Liverpool, with cattle, pigs and sheep, flour and bacon, with crew and cattle attendant, 75 hands in all, on 20th September, in Atlantic Ocean, 165° W. of Fastnet light, lat. 50° 40' N., long. 14° W., fell in with <i>City of Chester</i> .	£8000.	

## SERVICE.

## AWARD. APPORTIONMENT.

The latter was a mail s. s. 2712 tons nett, from New York to Liverpool, with crew of 146 hands, carrying passengers, mails and cargo, with crank shaft of her propeller broken and engines disabled, proceeding under sail at about 5 knots as long as wind was favourable. With difficulty, and after various breakings of the hawser, the *Brazilian* took the *City of Chester* in tow, and continued towing till 2 p.m. September 22, off Irish coast, remained by till 6 a.m. on September 23, when tugs took *City of Chester* to Liverpool. Value of *Brazilian* £60,000, live stock, £22,000, cargo, £15,000. *City of Chester* of great value.

*The City of Chester*, Jan. 20, 1881, (unreported).

## VII.—SERVICE.

## AWARD. APPORTIONMENT.

*Property—Service on Diseased Ship—Navigation.*

Barque *Hirundo*, 332 tons, crew of 8 hands, left Mexico, in August, for Queenstown, with cargo. On August 26, about 3000 miles from Liverpool, in lat. 36° N., long. 70° W. falls in with barque *Skibladner*, 360 tons, 10 hands, bound from Florida to Liverpool. The first and second mates were ill with fever, master had been too weak to do anything since leaving port. *Skibladner* was lost to sight, and on 1st September, seen again and boarded, first mate was then dead, another seaman was very ill, and no one to navigate. O. O., mate of *Hirundo*, who was the only person, except the master, who could navigate the ship, was left on *Skibladner*, and navigated her to Liverpool. Arrived on 11th October. 11th September, a gale, and O. O. had to work as a seaman—*Skibladner's* value, £2500, freight and cargo, £2635. Tender, £515.

£900.

£100 to owners, £50 to master, £150 among crew, according to rating, £800 to O. Osmandsen.

*The Skibladner*, L. R. 3 P. D. 24; 47 L. J. Ad. D. 84.

## CHAPTER II.

### TOWAGE.

**A contract of service.** TOWAGE is a contract of service whereby the tug, which must be competent to fulfil the engagement, by being properly found with crew, tackle, and equipments, agrees to tow a vessel from one point to another for the purpose of expediting her on her voyage, and to use her best endeavours for the purpose.<sup>1</sup> This is ordinary towage, extraordinary towage is in the nature of salvage, and arises from an agreement to tow a disabled vessel to a place of safety.<sup>2</sup> Salvage services can be grafted on ordinary towage, but not on extraordinary, which is for the purpose of saving a vessel, not merely expediting her on her voyage.<sup>3</sup> The Admiralty Division has jurisdiction by statute<sup>4</sup> to decide all claims and demands in the nature of towage. Under this authority it will enforce payment for towage services and also agreements entered into in regard to towage, but in the latter case the amount of remuneration to be received must be reasonable and certain. Thus, in one instance, where in addition to a fixed sum the master of the towed vessel agreed to give to the master of the tug an order upon the wharf owner for payment by him to the owners of the tug of the habitual premium—an uncertain amount—which was given to owners of tugs who should bring custom to the wharf, the Court

**Ordinary towage.**

<sup>1</sup> *The Minnehaha*, Lush. 345 (347).

<sup>2</sup> *The Reward*, 1 W. Rob. 174.

<sup>3</sup> *The Princess Alice*, 3 W. Rob. 138; *The Kingalock*, 1 Spk. 263.

<sup>4</sup> 3 & 4 Vict. c. 65, s. 6, see App. I. County Courts have jurisdiction over towage claims up to £150, 31 & 32 Vict. c. 71, s. 3.

refused either to enforce the agreement or to give damages for the breach of it.<sup>1</sup>

To be entitled to remuneration the tug must have fulfilled the obligations arising from the duty which she has undertaken;<sup>2</sup> nor when the amount to be paid for the service is fixed is the tug entitled to claim any extra sum in respect of a delay in the transit, as when a tow in the Thames, having come into collision with another vessel, the tug waited three days at Gravesend for the tow.<sup>3</sup>

From the fulfilment of her contract the tug may be released by discovering that material facts as to the tow were concealed when the agreement was made,<sup>4</sup> or by a *vis major* or un contemplated accidents which render the fulfilment of the engagement impossible; but unforeseen difficulties do not come within either of these terms.<sup>5</sup> Thus the breaking of the hawser, and delay in consequence, would be an example of a difficulty only. It may be doubted, however, whether the delay in the Thames mentioned above was not such an un contemplated accident as would have entitled the tug to have refused to wait by the tow, and to have considered the engagement at an end. But when the contract is dissolved by a *vis major*, or an un contemplated accident, it is the duty of the tug to remain by the tow in order to render all the assistance in her power, and then for the extra service the tug is entitled to claim salvage reward.<sup>6</sup> On the other hand, a concealment of material facts as to the state of the tug, or her inability during the transit to complete her service without delay, would entitle the tow to consider herself released from the contract, though any breach of it by the tug may

How a tug may be released from her engagement.

Release of tow from engagement.

<sup>1</sup> *The Martha*, Swa. 314.

<sup>2</sup> *The Edward Hawkins*, Lush. 515.

<sup>3</sup> *The Hjemmet*, L. R. 5 P. D. 227; 49 L. J. Ad. D. 66.

<sup>4</sup> *The Kingalock*, 1 Spk. 263.

<sup>5</sup> *The Minnehaha*, Lush. 345.

<sup>6</sup> *The Annapolis*, Lush. 355; *The J. C. Potter*, L. R. 3 Ad. 392; 40 L. J. Ad. 9; and further as to salvage by tugs, see *ante*, p. 18.

be waived, like the breach of any other contract by the other party.<sup>1</sup>

Legal principles governing the performance of the contract.

The principles which govern the performance of the contract have been concisely laid down in the leading case of the *Julia*,<sup>2</sup> in the following sentence, "the law would imply an engagement that each vessel would perform its duty in completing it; that proper skill and diligence would be used on board of each; that neither vessel, by neglect or misconduct, would create unnecessary risk to the other, or increase any risk which might be incidental to the service undertaken. If in the course of the performance of this contract any inevitable accident happened to the one, without any default on the part of the other, no cause of action would arise. Such an accident would be one of the necessary risks of the engagement to which each party was subject, and could create no liability on the part of the other. If, on the other hand, the wrongful act of either occasioned any damage to the other, such wrongful act would create a responsibility on the party committing it, if the sufferer had not by any misconduct or unskilfulness on her part contributed to the accident." On these principles the tug has been held liable for damage to the tow occasioned by a collision with a third vessel through the unskilful management of the tug,<sup>3</sup> and to indemnify a tow for the loss of anchors and hawsers lost by the tug taking a course too near a lee shore,<sup>4</sup> and a tow not to be entitled to damages against a tug for running her aground in a thick fog, since she herself had been guilty of contributory negligence by consenting to proceed in a fog of great density, in a narrow channel.<sup>5</sup>

<sup>1</sup> *The Lady Flora Hastings*, 3 W. Rob. 118.

<sup>2</sup> Lush 224; 14 Moo. P. C. 210.

<sup>3</sup> *The Night Watch*, 1.ush. 542; *The Energy*, L. R. 3 Ad. 48; 39 L. J. Ad. 25.

<sup>4</sup> *The Robert Dixon*, L. R. 5 P. D. 54.

<sup>5</sup> *Smith v. The St. Lawrence Ironboat Co.*, L. R. 5 P. C. 308; 28 L. T. N. S. 805. The case of *The Industrie*, L. R. 3 Ad. 303; 40 L. J. Ad. 26, shows that the Court has jurisdiction if damage has been

During the period of an ordinary towage engagement the tug is bound to obey the orders of the master of the tow, or of the pilot on board of her,<sup>1</sup> and is not responsible for the mismanagement of the master, or of the pilot, if one be on board the tow, if she attends to and fulfils, or endeavours to fulfil, the directions given from the tow.<sup>2</sup> If, however, the direction of the course of the two vessels is left to the discretion of that which is towing, and the governing power is in her, as not unfrequently happens if one large steamer takes in tow another which is disabled, the tug will be liable if any injury is caused to a third ship—either directly if she herself is the cause, or indirectly if done by the tow—since the latter would have a remedy over against her for any damages recovered by the third ship.<sup>3</sup> It has been decided that when there has been a breach of a towing contract by improper navigation on the part of the tug, by which the tow has been injured, the owners of the tug can limit their liability under the ordinary statutory provisions, though a breach of such a contract not arising from improper navigation would not bring the owners of the tug within the Act.<sup>4</sup>

occasioned to a pier by a ship, consequently this decision may be applicable to cases in which a ship through the negligence of its tug does such damage.

<sup>1</sup> *The Christina*, 3 W. Rob. 27.

<sup>2</sup> *The Duke of Sussex*, L. R. 3 Ad. 48; 39 L. J. 25; *The Julia*, Lush. 224; 14 Moo. P. C. 210; *The Ocean Wave*, L. R. P. C. 205; 6 Moo. P. C. N. S. 492. Since the case of *The Mary*, L. R. 5 P. D. 14; 48 L. J. Ad. D. 66, it is doubtful if a tug can obtain the benefit of the law as to non-liability in case of damage arising from the fault of a compulsory pilot. The basis of this decision appears to be that the tug entered into the contract of service voluntarily, and must therefore take the chances of the engagement; but this case is not easily reconciled with those already cited above. It must also be pointed out here that as a pilot cannot be continually giving orders to the tug, if the latter adopts a wrong manœuvre when the proper course was reasonably apparent, the tow will be held to blame for the fault of her servant, since this will not be considered as a fault on the part of the pilot. *The Siquasi*, L. R. 5 P. D. 241; 50 L. J. Ad. D. 5.

<sup>3</sup> *The American and Syria*, L. R. 6 P. C. 127; 43 L. J. Ad. 30.

<sup>4</sup> *Wahlberg v. Young*, 45 L. J. C. P. D. 783.

## CHAPTER III

### DAMAGE BY COLLISION, AND BREACH OF DUTY OR CONTRACT IN THE CARRIAGE OF GOODS.

The divisions of this subject.

THE subject of damage may be divided into four parts, that is to say, damage: I. To persons; II. To ships; III. To things other than the foregoing and cargo, as wharves, piers, &c.; IV. To cargo, under which head it is convenient to include damage by breach of contract or of duty in the carrying of cargo.

The jurisdiction of the Court.

The jurisdiction of the Admiralty Division over actions for damage is based at the present time partly on the original maritime jurisdiction<sup>1</sup> of the High Court of Admiralty, partly on two modern statutes. The material portions of these are as follows: "The High Court of Admiralty shall have jurisdiction to decide all claims and demands whatsoever for damage received by any ship or seagoing vessel, and to enforce the payment thereof whether such ship or vessel may have been within the body of a county or upon the high seas at the time when the damage was received in respect of which such claim is made."<sup>2</sup> And "The High Court of Admiralty shall have jurisdiction over any claim for damage done by any ship."<sup>3</sup>

The Court has jurisdiction *in rem* or *in personam* against the person who may have caused the damage, though it does not extend to actions against pilots per-

<sup>1</sup> As to this, see judgment of Justice Story, in *De Lovio v. Boit*, 2 Gallison, 396 (A.); Introduction to Pritchard's Digest.

<sup>2</sup> 3 & 4 Vict. c. 65, s. 6.

<sup>3</sup> A. C. A. 1861, s. 7.

sonally.<sup>1</sup> If one remedy has proved insufficient, the other may be employed, and likewise if a judgment is recovered in the Queen's Bench Division and proves inadequate to fully compensate the plaintiff, he may sue *in rem* in the Admiralty Division, but he will not be allowed to bring two actions concurrently.<sup>2</sup>

The jurisdiction over damage by collision extends to foreign and British ships in foreign and British waters.<sup>3</sup> But since the Court cannot enforce a writ against a ship of the Crown, the Lords of the Admiralty voluntarily instruct the Admiralty Proctor to enter an appearance for the commander of any ship of the Crown when an action, as is usual, is brought *in personam* against him for damage done by the ship of which he was in charge.<sup>4</sup> International courtesy also causes an exception to the general rule in the case of ships belonging to a foreign government which are used for public purposes.<sup>5</sup>

I. Actions may be brought by any person, whether he be an Englishman or a foreigner,<sup>6</sup> who has received any kind of injury from a ship,<sup>7</sup> or by the personal representatives of one whose death has been caused by the wrongful act of a ship.<sup>8</sup>

<sup>1</sup> *The Alexandria*, L. R. 3 Ad. 574; 44 L. J. Ad. 94.

<sup>2</sup> *The John and Mary*, Swa. 471; *The Zephyr*, 11 L. T. N. S. 351; *The Orient*, 3 L. R. P. C. 696; 40 L. J. Ad. 29.

<sup>3</sup> *The Bilbao*, Lush. 149; 3 L. T. N. S. 338; *The Diana*, Lush. 539; 32 L. J. Ad. 57; *The Courier*, Lush. 541; A. C. A. 1861, s. 7.

<sup>4</sup> M. S. A. 1854, s. 527; *The Athol*, 1 W. Rob. 374.

<sup>5</sup> *The Parlement Belge*, L. R. 5 P. D. 197; 42 L. T. N. S. 273; *The Charkieh*, 4 L. R. Ad. 59; 42 L. J. Ad. 17. In the matter of *The Charkieh*, 8 L. R. Q. B. 197; 42 L. J. Q. B. 75; and see further *ante*, p. 9.

<sup>6</sup> *The Explorer*, 3 L. R. Ad. 289; 40 L. J. Ad. 41.

<sup>7</sup> *The Sylph*, 2 L. R. Ad. 24; 39 L. J. Ad. 14; *The George and Richard*, 3 L. R. Ad. 466; 24 L. T. N. S. 717, unborn child. The Court will not take cognizance of a tort not in the nature of a collision, though a collision may be the consequence of it, as when a master of one ship cast off the moorings of another: *The Ida*, Lush. 6.

<sup>8</sup> *The Franconia*, 2 L. R. Ad. 163; 46 L. J. Ad. 33; *The Beta*, 2 L. R. Ad. 449; 38 L. J. Ad. 50; A. C. A. 1861, ss. 7 and 10; M. S. A. 1854, s. 14; 9 & 10 Vict. c. 93, s. 2. The decision in *The*



to ships,  
&c.

II. and III. Under the statutes already mentioned all injuries by ships to ships, by ships to things other than ships, or by other objects to ships, wherever the damage is done, are included;<sup>1</sup> and if owing to the negligence of one vessel, damage is caused by a second to a third, the first is liable for the indirect injury;<sup>2</sup> and this rule applies if the injuries received by the complaining ship are the results of any kind of negligence not necessarily of collision.<sup>3</sup>

The  
grounds of  
liability.

In order to render a ship liable for damage, it must have been entirely caused by the wrongful act of such ship;<sup>4</sup> for if it is wholly the result of inevitable accident, or wholly a consequence of the negligence or improper navigation of the vessel whose owners are plaintiffs, the ship proceeded against is free from liability. So also would it be if the act complained of arose from the conduct of a third person whose directions those on board the ship were bound to obey, as a harbour master,<sup>5</sup> or a compulsory pilot.<sup>6</sup> Should one vessel, however, make a collision inevitable, and the other in the agony of the meeting omit to do something which it would have been better to do, or do something which it would have been more seamanlike to omit, this will not be sufficient

*Franconia*, by the Court of Appeal, must be taken as overruling *Smith v. Brown*, 6 L. R. Q. B. 729; 40 L. J. Q. B. 214.

<sup>1</sup> A ship, under the M. S. Act, was defined by Lord Blackburn as every vessel that substantially goes to sea, or is not propelled by oars, unless it is also a seagoing craft: *Ex parte Ferguson*, 6 L. R. Q. B. 280; 40 L. J. Q. B. 105. For examples of rule in text, see *The Malvina*, Lush. 493; 31 L. J. Ad. 113 (barge); *The Sarah*, Lush. 549; *Purkis v. Flower*, 9 L. R. Q. B. 114; 43 L. J. Q. B. 33 (barge); *The Uhla*, 2 L. R. Ad. 29 n.; 37 L. J. Ad. 16 n. (a pier); *The Albert Edward*, 44 L. J. Ad. 49 (mooring dolphin); *The Clara Killam*, 3 L. R. Ad. 161; 23 L. T. N. S. 27 (submarine cable); *The Philadelphia Steamboat Co. v. The Philadelphia Ry. Co.*, 23 Howard, 207 (A.), (by piles in river).

<sup>2</sup> *The Thames*; *The Sisters*, 1 L. R. P. D. 117; 35 L. J. Ad. 39.

<sup>3</sup> *The Industrie*, 3 L. R. Ad. 303; 40 L. J. Ad. 26.

<sup>4</sup> For acts of negligence, see *post*, p. 47.

<sup>5</sup> *The Bilbao*, Lush. 149.

<sup>6</sup> As to compulsory pilotage, see *post*, p. 49.

to take the whole liability from the vessel whose act is the *causa sine qua non* of the collision.<sup>1</sup> But if a reasonable doubt exists as to the cause of a collision, it will be considered as an accident.<sup>2</sup> And where one ship is being towed by another, and a collision takes place with a third vessel, the one of the two ships will be liable on which is the governing as distinguished from the motive power.<sup>3</sup> Tow and tug are in law one vessel, and so a ship towing a pilot cutter has been held to blame when the latter carried a wrong light.<sup>4</sup> Subject, however, to these rules, the liability in each particular case depends wholly on the state of the particular facts.

A ship is held liable for damage if, in an action for damage by collision, it is proved that it has infringed any of the Regulations made under the Merchant Shipping Acts, 1854—1872, without absolute necessity.<sup>5</sup> That is to say, the liability attaches, unless the ship which has broken these rules can prove, not that the infringement was not, but could not have been a cause of the collision; or, in other words, either the absence of any infringement must be shown, or the impossibility of the collision having been a consequence of an infringement.<sup>6</sup> The House of Lords recently decided<sup>7</sup> that an unnecessary departure from the regulations, even in the agony of the

Liability  
after  
breach of  
maritime  
regula-  
tions.

<sup>1</sup> *The C. M. Palmer and The Larnax*, 29 L. T. N. S. 94; 2 Asp. M. C. 94; *The Bywell Castle*, L. R. 4 P. D. 219; 41 L. T. 747.

<sup>2</sup> *The Catherine of Dover*, 2 Hagg. 145.

<sup>3</sup> *The Aracan*, 6 L. R. P. C. 127; 43 L. J. Ad. 30.

<sup>4</sup> *The Mary Hounsell*, L. R. 4 P. D. 104; 48 L. J. Ad. D. 54.

<sup>5</sup> 36 & 37 Vict. c. 85, s. 17. The Regulations as to lights do not apply to dumb barges on the Thames, *The Owen Wallis*, 4 L. R. Ad. 175; 43 L. J. Ad. 36. For the Regulations, with some decisions thereon, see *post*, App. III.

<sup>6</sup> *The Hibernia*, 31 L. T. N. S. 804; 4 W. R. 60; *The Magnet*, 4 L. R. 417; 44 L. J. Ad. 1; *The Fanny M. Carvill*, 44 L. J. Ad. 34; 32 L. T. N. S. 646. The following are recent cases on s. 17. *The Lady Downshire*, L. R. 4 P. D. 26; 48 L. J. Ad. D. 41; *The Mary Hounsell*, L. R. 4 P. D. 204; 48 L. J. Ad. D. 54; *The Englishman*, L. R. 3 P. D. 18; 37 L. T. 412; *The Tirzah*, L. R. 4 P. D. 33; 48 L. J. Ad. D. 15; *The Buckhurst*, L. R. 6 P. D. 152.

<sup>7</sup> *The Khedive & Voovwaarts*, L. R. 5 App. Cas. 876; 43 L. T. N. S. 610.

collision, and though it only possibly contributed to the collision, did not absolve the ship from blame for such departure. The same decision tends to make it somewhat doubtful, though the departure could not possibly have contributed to the disaster, yet, if it was unnecessary, whether the ship so departing would not be to blame. As, however, this exact point did not arise in the case, this judgment is no direct authority on the question. But it was doubtful, until the Merchant Shipping Act, 1862, was passed, whether the statute which formulated the above rule could apply to foreign vessels on the high seas; the general tenor of international law being on the whole against such application.<sup>1</sup> And where a collision has occurred on the high seas between an English and a foreign ship any rules contained in the municipal law of the country to which such vessel belongs, as, for example, that the owner is not answerable for the fault of his captain, are of no avail here, since the general maritime law as administered by our Courts will govern the case.<sup>2</sup> Again, if a ship commits damage within the territory of a foreign power, the act complained of will not found a right of action here, unless it is both a wrong by the law of the country where the occurrence happened and by the law of England.<sup>3</sup>

Should a collision occur through a breach of these or any other maritime regulations, which breach is the result of a previous collision between the defendant ship and another, in which the former was not open to blame, she will not be considered liable for the subsequent

<sup>1</sup> *The Saxonia*, Lush. 410; 31 L. J. Ad. 201; Story, Conflict of Laws, p. 32. See now M. S. A. 1862, s. 56, and the International Regulations.

<sup>2</sup> *The Leon*, L. R. 6 P. D. 148; 50 L. J. Ad. D. 59. The case of the Gen. Steam Navigation Co. v. Guillou, 11 M. & W. 877, does not conflict with this decision.

<sup>3</sup> *The Halley*, L. R. 2 P. C. 193; 37 L. J. Ad. 33; *The M. Mozham*, L. R. 1 P. D. 107; 46 L. J. Ad. D. 17; Westlake, Private International Law, 2nd ed., 222

breach.<sup>1</sup> If the person in charge of one ship, after a collision, fails to render all practicable assistance in his power to the other ship, if she requires it, this will raise a *prima facie* presumption that the collision occurred through his wrongful act or negligence, and he must give satisfactory evidence to rebut it.<sup>2</sup>

In addition to the neglect of statutory provisions which constitutes one form of negligence, it may arise from many circumstances, as improper sailing manœuvres;<sup>3</sup> the crossing of a river by a steamer in a dense fog;<sup>4</sup> absence of proper notice to passing vessels of an approaching launch;<sup>5</sup> want of proper warning by a ship aground in a river;<sup>6</sup> causing a swell in a river, and not easying when passing small craft;<sup>7</sup> want of proper look out;<sup>8</sup> too high a rate of speed;<sup>9</sup> anchoring in an inconvenient place;<sup>10</sup> carelessness in fulfilling the orders of a dock master when a vessel is entering or leaving dock,<sup>11</sup> and employing too weak a tug for docking or undocking.<sup>12</sup>

If the complaining ship or thing is proved to have suffered injury entirely in consequence of its own negligence, it must bear the whole of its own losses.<sup>13</sup> Examples of such negligence are giving a foul birth,<sup>14</sup> want of conspicuous lights, when a vessel is casting off from her moor-

<sup>1</sup> *The Kjobenhaven*, 30 L. T. N. S. 136; 2 Mar. L. C. N. S. 213.

<sup>2</sup> M. S. A. 1873, s. 16; *The Queen*, 2 L. R. Ad. 35; 38 L. J. Ad. 39; *The Adriatic*, 33 L. T. 102.

<sup>3</sup> *The Marmion*, 27 L. T. N. S. 255; 1 Mar. L. C. N. S. 412.

<sup>4</sup> *The Lancashire*, 4 L. R. Ad. 98; 29 L. T. N. S. 927.

<sup>5</sup> *The Blenheim*, 10 Jur. 79; *The Glengarry*, 43 L. J. Ad. 37; 30 L. T. N. S. 341; *The Andalusian*, 2 L. R. P. D. 231; 36 L. J. Ad. 77.

<sup>6</sup> *The Industrie*, 3 L. R. Ad. 303; 40 L. J. Ad. 26; *The Thomas Lee*, 35 L. T. 406; 3 Mar. L. C. 260.

<sup>7</sup> *The Batavier*, 1 Spk. 378.

<sup>8</sup> *The Glannibanta*, 1 L. R. Ad. D. 283; 34 L. T. N. S. 934.

<sup>9</sup> *The City of Brooklyn*, 1 L. R. Ad. D. 279; 34 L. T. N. S. 394.

<sup>10</sup> *The Bona*, 29 L. T. N. S. 781; 2 Mar. L. C. N. S. 182.

<sup>11</sup> *The Cynthia*, L. R. 2 P. D. 52; 46 L. J. Ad. D. 58.

<sup>12</sup> *The Belgic*, L. R. 2 P. D. 57; 35 L. T. 929.

<sup>13</sup> For example, *The Bellerophon*, 44 L. J. Ad. 7; 33 L. T. N. S. 412.

<sup>14</sup> *The Vivid*, 42 L. J. Ad. 57; 29 L. T. N. S. 375.

ings, and the regulation lights cannot be seen;<sup>1</sup> or of strength in a pier.<sup>2</sup>

Inevitable  
accident.

When damage is caused by circumstances which the ship against which the action is brought could not have prevented by the exercise of ordinary care, caution, and maritime skill, the result of such events is an inevitable accident.<sup>3</sup> But if anything has been omitted to be done by the injuring ship which might have rendered the accident less probable, though it might not have actually averted it, the defence of inevitable accident will not avail,<sup>4</sup> in other words, those in charge of a ship must take all such precautions as men of ordinary prudence and skill exercising reasonable foresight would use to avert damage in the position in which they are placed.<sup>5</sup> The burden on the defendant of proving that damage is the result of an inevitable accident does not fall on him until a *prima facie* case of negligence is shown against him by the plaintiff.<sup>6</sup> It is also the Admiralty rule that where one ship has suffered loss from a collision, which the defendants state has been caused by the want of proper courage and seamanship on the part of those in charge of the injured vessel, the burden of proving this fact lies on the defendants.<sup>7</sup>

When both  
ships are  
in fault.

If both ships are in fault, each bears half the loss caused to the other, without regard to the amount of negligence shown by the two vessels.<sup>8</sup>

<sup>1</sup> *The John Fenwick*, 3 L. R. Ad. 500; 41 L. J. Ad. 38; *The Philotaxe*, 37 L. T. 540.

<sup>2</sup> *The Albert Edward*, 44 L. J. Ad. 49; 24 W. R. 179.

<sup>3</sup> *The Virgil*, 2 W. Rob. 201; *The Aimo*, 29 L. T. N. S. 118; 21 W. R. 707; *The Marpesia*, 4 L. R. P. C. 212; 26 L. T. N. S. 333.

<sup>4</sup> *The Pladda*, L. R. 2 P. D. 34; 46 L. J. Ad. D. 61.

<sup>5</sup> *The William Lindsay*, 5 L. R. P. C. 338; 29 L. T. N. S. 355 (breaking of a mooring buoy); *The Calcutta*, 21 L. T. N. S. 768; 3 Asp. M. C. (O. S.) 336; *The Virgo*, 35 L. T. N. S. 519; 3 Asp. M. C. N. S. 285 (latent defect in machinery); *The Marpesia*, 4 L. R. P. C. 212; 26 L. T. N. S. 333 (thick fog).

<sup>6</sup> *The Marpesia*, *sup.*

<sup>7</sup> *The Thuringia*, 41 L. J. Ad. 44; 26 L. T. N. S. 446.

<sup>8</sup> *The Milan*, Lush. 388; 31 L. J. Ad. 105; J. A. 1873, a. 25, sub-a. 9.

But the liability of the master or owner for damage is taken away when the loss or damage has been occasioned solely<sup>1</sup> by the fault or incapacity of a licensed pilot actually at the time when such damage was done in charge of the injuring ship, within the bounds of a district where the employment of a pilot on ships, including such as the vessel complained of, is compelled by law.<sup>2</sup> If the defendant proves that his ship was in charge (a) of a qualified pilot, (b) that he was bound to employ him by law, (c) negligence on the part of the pilot a cause of damage, his *prima facie* liability is removed, and the complaining party must rebut this evidence by showing contributory negligence on the part of the defendant or other causes in order to render the defendant liable.<sup>3</sup> But the default of

Damage  
through  
fault of  
pilot.

<sup>1</sup> *The Queen*, 2 L. R. Ad. 354; 38 L. J. Ad. 39.

<sup>2</sup> M. S. A. 1854, s. 388. This statute applies to foreign ships in British waters: *The Annapolis*, Lush. 295; 30 L. J. Ad. 201; and to British ships in foreign waters where pilotage is compulsory: *The Halley*, 2 L. R. P. C. 193; 37 L. J. Ad. 33; *The Peerless*, Lush. 103; 13 Moo. P. C. 444; *The Earl of Auckland*, Lush. 164; 30 L. J. Ad. 121. The provisions by which the employment of pilots is made compulsory are contained in the Merchant Shipping Act, 1854; and in various local Acts and Orders in Council. These are too numerous to be mentioned here, but the provisions of the Merchant Shipping Act, 1854, may be briefly referred to.

S. 353 continues the compulsory employment of pilots in all districts where it was compulsory when the Act came into operation.

S. 354 obliges home trade passenger ships to carry a pilot, unless the master or mate has a pilot's certificate, as to which see s. 355.

S. 370 defines Trinity House limits: London District, from London and Rochester Bridges to Orfordness on N. and Dungeness on S. Trinity House outport districts: any pilotage district for the appointment of pilots within which no particular provision is made by statute or charter.

S. 376 makes employment compulsory in London district and Trinity House outport districts.

S. 379 exempts coasting traders, ships of less than 60 tons, traders to Boulogne or places N. of Boulogne, from Channel Islands and Isle of Man with stone; ships within the limits of their own ports and ships passing through a pilotage district, all when *not* carrying passengers.

For further exemptions, see 6 Geo. IV. c. 125, Orders in Council, 18 February, 1854 (referring chiefly to ships trading to Norway), 25 January, 1861, 21 December, 1871.

For list of local statutes, see Marsden's Law of Collisions at Sea, p. 122.

<sup>3</sup> *Clyde Navigation Co. v. Barclay*, 1 L. R. App. Cas. 790; *The Daoiz*, 47 L. J. Ad. 1; 37 L. T. 137; *The Marathon*, 48 L. J. Ad. D. 17.

the pilot must be strictly in regard to the exercise of his authority as a pilot: that authority consists in having the whole conduct of the ship vested in him, and having the sole direction of her in those matters wherein local knowledge is required.<sup>1</sup>

Damage to cargo from collision.

If under any of the circumstances already mentioned, excepting inevitable accident, damage is done to cargo, the owner can recover damages from the ship which has caused the injury; but in the case of negligence on the part of both ships, one moiety only of the damage from the ship which collided with that wherein the cargo was laden.<sup>2</sup>

Damage to cargo and breach of duty or contract.

It will be convenient to discuss together actions based on the Admiralty Court Act, 1861,<sup>3</sup> for damage done to cargo by the ship, whether British or foreign,<sup>4</sup> on which it is laden, and for breach of duty or of contract on the part of the owner, master, or crew of a ship<sup>5</sup> carrying a cargo which is injured by the consequences of such breach. Such actions may be *in personam* or *in rem*.<sup>6</sup>

(A.) As to the parties to such actions. The owner or any consignee or assignee named in the bill of lading, even though the property in the goods has not passed by means of an indorsement on the bill of lading, may sue.<sup>7</sup>

(B.) As to the circumstances under which an action will lie. The statute has always been liberally construed, and

<sup>1</sup> *The Iona*, 1 L. R. P. C. 426; 16 L. T. N. S. 159; *The City of Cambridge*, 5 L. R. P. C. 451; 30 L. T. N. S. 439.

<sup>2</sup> *The Milan*, Lush. 388; 31 L. J. Ad. 105.

<sup>3</sup> s. 6. "The Court of Admiralty shall have jurisdiction over any claim by the owner or consignee or assignee of any bill of lading of any goods carried into any port of England or Wales, in any ship, for damage done to the goods, or any part thereof, by the negligence or misconduct of, or for any breach of duty or breach of contract on the part of the owner, master, or crew of the ship."

<sup>4</sup> *The Ironsides*, Lush. 458; 31 L. J. Ad. 129.

<sup>5</sup> A. C. A. 1861, s. 6.

<sup>6</sup> *The Pieve Superiore*, 5 L. R. P. C. 482; 43 L. J. Ad. 20.

<sup>7</sup> 18 & 19 Vict. c. 111; *The St. Cloud*, Br. & L. 4; 8 L. T. N. S. 54; *The Norway*, Br. & L. 377; 12 L. T. N. S. 57; *The Nepoter*, 2 L. R. Ad. 375; 38 L. J. Ad. 63; *The Marathon*, 40 L. T. N. S. 163.

therefore, though the goods must be despatched to some port of England or Wales, they need not necessarily reach such a port as long as the ship on which they were originally laden does so.<sup>1</sup> Nor, again, need the cargo be actually discharged, so long as under the bills of lading it might possibly be carried into and delivered at a port in England or Wales, and the ship does in fact touch at an English port of call for orders. And even if the goods are consigned to a foreign port and the ship touches at an English port for orders, it appears that the Court has jurisdiction, and there can be no doubt that it will entertain an action under the Act, if the ship, though despatched to a foreign port, discharges her cargo in England.<sup>2</sup> The owner of the ship when the damage complained of was done must not have been domiciled in England or Wales.<sup>3</sup>

The goods and the duty or the contract must be such as are mentioned in or arise out of the bill of lading,<sup>4</sup> after the cargo has been placed on board.<sup>5</sup> And to absolve the owners of a ship from liability in consequence of a change of ownership *quoad* the cargo by a charter, notice of such change must be brought to the knowledge of the shippers, otherwise the master will still be regarded as the agent of the owners,<sup>6</sup> though when the action is *in rem* a lien attaches from the moment of arrest, so that in this form of proceeding this rule is of little consequence. If the

<sup>1</sup> *The Dantzic*, Br. & L. 102; 32 L. J. Ad. 164. But if they were first laden on ship A., and transhipped to ship B., in which they arrive, ship A. is not liable for damage done on the voyage: *The Ironsides*, Lush. 458; 31 L. J. Ad. 129.

<sup>2</sup> *The Bahia*, Br. & L. 61; 12 L. T. N. S. 145; *The Pieve Superiore*, 5 L. R. P. C. 482; 43 L. J. Ad. 20.

<sup>3</sup> *The Ella A. Clark*, Br. & L. 32; 8 L. T. N. S. 119, decided on 3 & 4 Vict. c. 65, s. 6; *The Pacific*, Br. & L. 244; 10 L. T. N. S. 541.

<sup>4</sup> *The Norway*, Br. & L. 226; 10 L. T. N. S. 40; *The Princess Royal*, 3 L. R. Ad. 41; 39 L. J. Ad. 43; *The Pieve Superiore*, 5 L. R. P. C. 482; 43 L. J. Ad. 20.

<sup>5</sup> *The Danneborg*, 4 L. R. Ad. 386; 44 L. J. Ad. 2.

<sup>6</sup> *The Great Eastern*, 2 L. R. Ad. 88; 36 L. J. Ad. 15; *The Patria*, 3 L. R. Ad. 436; 41 L. J. Ad. 43; *Sandeman v. Scurr*, 2 L. R. Q. B. 86; 36 L. J. Q. B. 58.



charter-party is alluded to in the bill of lading, the two instruments must be read together<sup>1</sup> so far as the former affects the contract which the latter contains.<sup>2</sup>

Circumstances which constitute a breach of duty or contract.

What is negligence or misconduct, and what is a breach of duty or of contract, sufficient to sustain an action by the owner, consignee, or assignee of the cargo against the ship on which it has been laden, depends on the special facts of each case, and the general law applicable thereto, subject to the rules already given. The following are some of the circumstances on which such an action can be based: Refusal to deliver cargo on payment of *pro rata* freight;<sup>3</sup> refusal to deliver goods to a vendor with a right of stoppage *in transitu*;<sup>4</sup> unnecessary delay in time of war when avoiding hostile cruisers;<sup>5</sup> withholding, by the master from the owner of the cargo, particulars of amount of freight and general average contribution due from him;<sup>6</sup> barratrous act of master;<sup>7</sup> wrongful sale of cargo, as when there is no necessity for such sale, and when there has been no previous communication with the owners;<sup>8</sup> wrongful detention of goods under M. S. A. 1862, ss. 67 and 68.<sup>9</sup> The contract entered into between the owner of the cargo and the ship must be construed according to its meaning as far as it is obvious. The law by which the contract is governed, *i.e.*, that which the parties thereto contemplated when they entered into it, will be applied to its con-

<sup>1</sup> *The San Roman*, 3 L. R. Ad. 583; 42 L. J. Ad. 46; 5 L. R. P. C. 301.

<sup>2</sup> *The Norway*, Br. & L. 226; 10 L. T. N. S. 40.

<sup>3</sup> *The Patria*, 3 L. R. Ad. 436; 41 L. J. Ad. 43.

<sup>4</sup> *The Tigress*, Br. & L. 38; 32 L. J. Ad. 97.

<sup>5</sup> *The San Roman*, 3 L. R. Ad. 583; 42 L. J. Ad. 46; 5 L. R. P. C. 301. Definition of sufficient cause to justify delay, "apprehension of capture founded on circumstances calculated to affect the mind of a master of ordinary courage, judgment, and experience": *The San Roman*.

<sup>6</sup> *The Norway*, Br. & L. 226; 10 L. T. N. S. 40.

<sup>7</sup> *The Chasca*, 4 L. R. 446; 44 L. J. Ad. 17.

<sup>8</sup> *Acatos v. Burns*, L. R. 3 Ex. D. 282; 4 L. J. Ex. 566.

<sup>9</sup> *The Energie*, 6 L. R. P. C. 307; 44 L. J. Ad. 25.

struction; subject to this rule such law is generally the law of the flag under which the ship sails.<sup>1</sup>

As to damage under head IV., that is to say, in respect of cargo, the plaintiff must prove damage, by showing, (a) the sound condition of the goods when put on board; (b) that they are delivered in a damaged condition;<sup>2</sup> the defendants must then prove, if they can, that they are not responsible for such damage.

In all cases of damage to goods the party doing the injury must bear the whole loss, so that if in the case of a collision the complaining ship on which cargo was laden was itself entirely to blame, it would have to recompense the owner of the cargo if injured, and if both ships are found to blame, one moiety of the damage to the cargo is recoverable against one ship, the other moiety, as has been already stated, against the other ship.<sup>3</sup>

In an action for damage to cargo, it has also been held that the shipowner may set up a counter-claim for a general average contribution, which, with the original demand, if the ground of action is proved, will be referred to the Registrar and Merchants.<sup>4</sup>

Lastly, as to the amount of damages to be awarded. When loss of life, or damage under the first three heads of this subject, is caused without the actual fault or privity<sup>5</sup> of the owners, whether registered or equitable,<sup>6</sup> of a ship,<sup>7</sup>

<sup>1</sup> *The Patria*, 3 L. P. Ad. 436; 41 L. J. Ad. 43; *The Express*, 3 L. R. Ad. 597; 41 L. J. Ad. 79; *Lloyd v. Guibert*, 1 L. R. Q. B. 115; 33 L. J. Q. B. 241; *The Wilhelm Schmidt*, 25 L. T. N. S. 34; *Pope v. Nickerson*, 3 Story, 465 (A).

<sup>2</sup> *The Prospero Palazzo*, 29 L. T. N. S. 622; *The Peter de Grosse*, 1 L. R. Ad. D. 414.

<sup>3</sup> *The Milan*, Lush. 388; 31 L. J. Ad. 105. The owners of the cargo must be parties to the suit in order to recover: *The Saracen*, 6 Moore, P. C. 56; 4 N. of C. 509.

<sup>4</sup> *The Oquendo*, 38 L. T. N. S. 157.

<sup>5</sup> Privity, i.e., intervention. See *The Obey*, 1 L. R. Ad. 102; 12 Jurist. N. S. 817.

<sup>6</sup> *The Spirit of the Ocean*, Br. & L. 336; 34 L. J. Ad. 74.

<sup>7</sup> That is in the case of a British vessel one which is registered: thus, a launch not registered under M. S. A. 1854, s. 18, is not

Limitation of liability. whether British or foreign, their<sup>1</sup> liability is limited, (a) in respect of loss of life or personal injury alone, or together with loss or damage to other things, to an aggregate amount not exceeding 15*l.* for each ton of the ship's tonnage; (b) in respect of loss or damage to ship's goods, merchandise, or other things, either alone or together with loss of life or personal injury, to an aggregate amount not exceeding 8*l.* for each ton of the ship's tonnage.<sup>2</sup> A claim of such limitation does not *ipso facto* admit liability, so that when bail is given for the amount in respect of which the owners would be liable with a limitation of their liability the vessel is frequently not arrested, or if arrested is released.<sup>3</sup> On each distinct occasion when damage is done the rule applies, but such occasions must be clearly separate in point of time in order to prevent them being regarded as a single occasion,<sup>4</sup> and the rule applies even if the ship in respect of which limitation is claimed is totally lost.<sup>5</sup> In ascertaining the actual amount payable, it is important to observe that if both ships are found to blame, so that each has to pay a moiety of the damage sustained by the other, and the provisions as to the limitation of liability become applicable, and the amount payable by one much exceeds that payable by the other, the full amount of the larger sum must be proved for against the amount paid into Court without any deduction in respect of the smaller sum payable by the proving vessel.<sup>6</sup>

entitled to limitation of liability: *The Andalusian*, L. R. 3 Ad. D. 182; 47 L. J. Ad. 65.

<sup>1</sup> If caused by fault of one of several co-owners, the rule applies to the others: *The Spirit of the Ocean*, Br. & L. 336; 34 L. J. Ad. 74.

<sup>2</sup> M. S. A. 1862, s. 54. Carriers partly by land and partly by sea, who issue tickets for land and sea journeys, can obtain the benefit of this statute: *London and S. W. Ry. Co. v. James*, 8 L. R. Ch. 241; 42 L. J. Ch. 337.

<sup>3</sup> *The Amalia*, Br. & L. 151 (155); 8 L. T. N. S. 805.

<sup>4</sup> *The Rajah*, 3 L. R. Ad. 539; 41 L. J. Ad. 97. As to method of pleading, see *post*, Part II. O. xix. r. 3.

<sup>5</sup> *The Normandy*, L. R. 3 Ad. 152; 39 L. J. Ad. 48.

<sup>6</sup> *Chapman v. Royal Netherlands Steam Navigation Co.*, L. R. 4 P. D. 157; 48 L. J. Ch. 449. As to deductions in respect of crew

It may be convenient in this place to direct attention to the general practice in regard to the limitation of an owner's liability. It may be claimed in a statement of defence in which liability for the collision is admitted, and a stay of proceedings can then be moved for and will probably be granted, except as regards the proceedings for taxation and payment of costs, on payment into Court of the aggregate sum for which the owners are liable.<sup>1</sup> This relief may be also claimed alternatively by way of counter-claim,<sup>2</sup> and, as we have seen, it is also possible for owners to obtain the release of their ship by paying the amount of their liability into Court, without thereby admitting any liability.<sup>3</sup> But the most usual practice is to claim the benefit of the statutory provisions, after the main action has been decided, by the issue of a writ claiming limitation, and by delivering a statement of claim showing that the vessel in question has been found to blame; that the owners were not privy to the negligence which caused the collision, that the tonnage of the vessel is of a certain amount, that the amount due in respect of such tonnage has been paid into Court, and claiming that the owners have a decree limiting their liability to this amount. The limitation action will then be set down for trial, and be heard on the usual motion day. The facts must be verified by affidavit, and the ship's register must be brought into Court. The required decree will then be granted, and advertisements must be inserted in the newspapers calling upon persons who may have claims arising from the cause of damage in respect of which the limitation is granted to send in their claims generally within six

The  
practice  
as to  
obtaining a  
limitation  
of liability.

space, see M. S. A. 1854, ss. 21, 22, 23; and M. S. A. 1862, ss. 54, 60: *The Franconia*, L. R. 3 P. D. 164; 39 L. T. N. S. 57. The register at the time of collision is *prima facie* evidence of the tonnage: *The John McIntyre and John Ormston*, 50 L. J. Ad. D. 76.

<sup>1</sup> *The Clutha*, 45 L. J. Ad. 108; 35 L. T. N. S. 36.

<sup>2</sup> *Wahlberg v. Young*, 45 L. J. C. P. D. 783.

<sup>3</sup> *The Amalia*, Br. & L. 151; 8 L. T. N. S. 805; *The Sisters*, L. R. 1 P. D. 281; 35 L. T. N. S. 36.

months, or within any shorter period which may be fixed by the Court. The money will be paid out at the end of this period, a reference, if necessary, having been previously held when there are several claimants. If the defendant in the limitation suit desires it the Court will require the plaintiff's solicitor to give an undertaking that the costs of the limitation action shall be duly paid.<sup>1</sup> It should be noted that the holder of a bottomry bond on freight has a claim for the amount of his bond against a sum paid out of Court to the owners of the innocent vessel in respect of loss of freight.<sup>2</sup>

The assessment of damages.

The principle which regulates the assessment of damages to a ship is that the plaintiff shall be placed in the same position as if the ship had not been lost or damaged,<sup>3</sup> subject to the provisions as to limited liability which have already been mentioned. If the ship is totally lost, the owner should receive her value and that of the freight which she would certainly have earned but for her destruction.<sup>4</sup> If the vessel is partially injured, the damages recoverable consist of the cost of necessary repairs, even though she may be more valuable after they have been executed than before the collision,<sup>5</sup> and a sum by way of consequential damages, if any have been incurred, less the sums which would have been spent in earning that which is lost,<sup>6</sup> in respect of losses proximately or necessarily

<sup>1</sup> *The Sisters*, L. R. 1 P. D. 281 ; 35 L. T. N. S. 36 ; *The Expert*, 36 L. T. N. S. 258.

<sup>2</sup> *The Empusa*, L. R. 5 P. D. 6 ; 48 L. J. Ad. D. 36.

<sup>3</sup> *The Clyde*, Swa. 23.

<sup>4</sup> *The South Sea*, Swa. 141. When a vessel was sunk by a collision, and was afterwards raised and repaired, and the cost exceeded her original value, it was held that the measure of damage was this prior value, though as this decision turned largely on whether or not the owners should have, if properly advised, undertaken to repair her, it can hardly be looked on as establishing a general rule : *The Empress Eugenie*, Lush. 138 ; and see next page.

<sup>5</sup> *The Clyde*, *sup.* ; *The Pactolus*, Swa. 173 ; 28 L. T. N. S. 220.

<sup>6</sup> *The Black Prince*, Lush. 568 ; 5 L. T. N. S. 39 (by way of demurrage) ; *The Leyatus*, Swa. 168. Salvage to damaged ship, but not if rendered necessary by the misconduct or negligence of her crew :

caused by the injury which is the ground of the action,<sup>1</sup> but exclusive of those which, though they result from the damage, are not necessary consequences of it.<sup>2</sup> Thus when the damaged ship was one of a line of steamers, each of which took turns for sailing, and in the ordinary course of business was idle for a certain time, and the vessel in question lost her turn and took the following one, it was held that she was entitled to demurrage for the number of days she remained in port after her usual day of sailing, but not for the whole time during which she was in port.<sup>3</sup> The usual demurrage rate is sixpence per ton per day for steamers and fourpence for sailing ships.<sup>4</sup> For the same reasons if a charter-party is abandoned because owing to the collision there is no reasonable probability that it can be fulfilled, this is a clear element of damage.<sup>5</sup> Where the limited liability exceptions do not apply, interest where the vessel is lost without cargo runs from date of loss to date of payment; where she is lost with cargo, on the value of ship and freight from the date of the probable end of the voyage.<sup>6</sup> Where the limited liability provisions are applicable, interest runs in all cases from the date of the loss.<sup>7</sup>

Generally, when a ship is totally lost, her market value at the time of her loss is a fair criterion of her actual value, but it may also be estimated from various other facts, as her original value, or the opinion of competent witnesses on

*The Linda*, Swa. 206; *The Betsy Caines*, 2 Hagg. 28. Sums agreed to be paid as salvage: *The Star of India*, 1 L. R. Ad. D. 446; 45 L. J. Ad. 102 (loss of freight); *The Gazelle*, 21 W. Rob. 279.

<sup>1</sup> *The Thuringia*, 41 L. J. Ad. 44; 26 L. T. N. S. 446.

<sup>2</sup> E.g., if greater courage would have prevented them: *The Thuringia*; *The Flying Fish*, 3 Moo. P. C. N. S. 87; 34 L. J. Ad. 113; *The Empress Eugenie*, Lush. 138.

<sup>3</sup> *The Black Prince*, Lush. 468; 5 L. T. N. S. 39.

<sup>4</sup> *The City of Buenos Ayres*, 25 L. T. N. S. 672; 1 M. L. C. (N. S.) 169.

<sup>5</sup> *The Consett*, L. R. 5 P. D. 229.

<sup>6</sup> *The Canada*, Lush. 586.

<sup>7</sup> *The Northumbria*, 3 L. R. Ad. 6; 39 L. J. Ad. 3; *The City of Buenos Ayres*, 25 L. T. N. S. 672; 1 Asp. M. C. (N. S.) 169.

board as to her condition, or of persons conversant with shipping who can form an independent judgment.<sup>1</sup>

Damages  
after in-  
juries to  
goods.

When goods are lost or injured, the damages to be awarded are usually the value of the lost goods, or the amount by which their value has been reduced. That value is, generally speaking, the market value of the goods at the time and place where they should have been delivered, or in case of partial damage only, at the port of discharge. If from any cause there is no market for the goods, their real value, so far as is possible, must be ascertained as a fact, by considering the circumstances which would have influenced the market if one had existed, that is to say, the price of similar goods at the place of manufacture or production, less the cost of carriage, and allowing a reasonable sum for importer's profit.<sup>2</sup>

In breach  
of contract  
or duty.

In case of a breach of contract or of duty the measure of damages is the amount of any loss, so far as it is a natural and necessary consequence of such breach, which is at once actual and reasonably possible, or such as is the natural consequence of a non-fulfilment of an object within the contemplation of the parties to the bill of lading.<sup>3</sup>

In most cases the damages, whether arising from collision or breach of a charter-party, are referred to the Registrar and Merchants for assessment; but when the question of damage can be decided on the hearing of the action more fitly than by the Registrar and Merchants, the Court will give a decision on the point.<sup>4</sup> In questions arising out of

<sup>1</sup> *The Clyde*, Swa. 23; *The Ironmaster*, Swa. 443; *The African Steamship Co. v. Swanzy*, 2 Kay & J. 660; 25 L. J. Ch. 870.

<sup>2</sup> See *Mayne on Damages*, 2nd ed. 220; *Rice v. Baxendale*, 7 H. & N. 96; 30 L. J. Ex. 371; *O'Hanlan v. Great Western Ry. Co.*, 6 B. & S. 484; 34 L. J. Q. B. 154; *The St. Cloud*, Br. & L. 4 (18); *Brandt v. Bewley*, 2 B. & Ad. 932 (939).

<sup>3</sup> *The Parana*, 2 L. R. Ad. 118; 36 L. T. N. S. 388; *Simpson v. London and N. W. Ry. Co.*, 1 L. R. Q. B. D. 274; 45 L. J. Q. B. D. 182; *Sedgwick on Damages*, 6th ed., p. 431.

<sup>4</sup> *The Maid of Kent*, 50 L. J. Ad. D. 71.

damage to cargo, the Registrar should follow common law principles in assessing the amount due.<sup>1</sup>

A maritime lien for damage arises as soon as the injury <sup>Maritime</sup> lien. is done; it attaches henceforth to the ship,<sup>2</sup> and to its appurtenances,<sup>3</sup> and to the whole of the freight.<sup>4</sup> But the cargo may be arrested for freight due in respect of its carriage, which was in process of being earned, though it was not on board at the time when the damage was done.<sup>5</sup>

But no maritime lien exists against a ship in cases arising out of the negligence, misconduct, or breach of duty of the owner, master, or crew of a ship, so that valid charges have a priority over such claims, and the vessel is only a security from the time of its arrest.<sup>6</sup>

In any cause of action already mentioned, proceedings <sup>Limitation</sup> to actions. should not be taken in the Admiralty Division if the amount claimed does not exceed 300*l.* Recent decisions, as pointed out previously (p. 15), have, however, abrogated the provisions of the County Court Acts<sup>7</sup> as to costs, and the matter is one for the discretion of the Court.

<sup>1</sup> *The St. Cloud*, Br. & L. 4.

<sup>2</sup> *The Bold Buccleugh*, 7 Moo. P. C. 267 (281); *The Lymington*, 32 L. T. N. S. 69; 23 W. R. 421. The claim is good against the full value of the ship, if repaired subsequently to the date of damage: *The Aline*, 1 W. Rob. 111 (120).

<sup>3</sup> *The Alexander*, 1 Dods. 278 (282); *The Dundee*, 1 Hagg. 104.

<sup>4</sup> *The Rowcliff*, 2 L. R. Ad. 363; 38 L. J. Ad. 56.

<sup>5</sup> *The Leo*, Lush. 444; 31 L. J. Ad. 78; *The Orpheus*, 3 L. R. Ad. 308; 40 L. J. Ad. 24. And see *ante* as to lien generally, p. 6.

<sup>6</sup> *The Pieve Superiore*, 5 L. R. P. C. 412; 43 L. J. Ad. 20.

<sup>7</sup> 31 & 32 Vict. c. 71, ss. 3, 4, 9; 32 & 33 Vict. c. 57, ss. 2, 4.



## CHAPTER IV.

### WAGES.

THE law relating to the wages of seamen has in this country since the passing of the Merchant Shipping Act, 1854, become almost wholly statutory, and the jurisdiction of the Admiralty Division itself may be said now to be based on the Admiralty Court Act of 1861, which finally gave to this maritime tribunal a power which had been long and often denied to it by the Courts of Common Law. By that statute the Court has "jurisdiction over any claim by a seaman of any ship for wages earned by him on board the ship, whether the same be due under a special contract or otherwise, and also over any claim by the master of any ship for wages earned by him on board the ship, and for disbursements made by him on account of the ship."<sup>1</sup>

A seaman to whom wages are due has a right of action against the owner or the master (if he be not himself the master) at law, or he may bring his action in the Admiralty Division, either *in personam* against the owner or *in rem* against the ship,<sup>2</sup> and if he fails to obtain relief, or all the relief to which he is entitled, by one process, the other remains open to him,<sup>3</sup> so that if he consents to forego his claim against the owner personally, the ship is not

<sup>1</sup> 24 Vict. c. 10, s. 10. Ship in the above section is, by s. 2, defined as "any description of vessel used in navigation not propelled by oars."

<sup>2</sup> A. C. Act, 1861, s. 35.

<sup>3</sup> *The Bengal*, Swa. 468; and see further as to actions *in rem* and *in personam*, p. 43.

thereby released from its maritime liability for any wages which may be due.<sup>1</sup> It is necessary, in the first place, to point out who are entitled to sue for wages.

The general rule is that any person who has done any work on board a ship can bring an action to obtain what is due to him.<sup>2</sup>

The jurisdiction of the Court extends to foreign seamen on board foreign ships, but when foreign ships are sued, whether by a British or a foreign seaman, certain formalities are required preliminary to the action. Notice of the action against the ship must be sent to the consul of the country to which she belongs. Should this official enter a protest against the cause being entertained by the Court, and state reasons for it, the claimant must dispute any facts which it is necessary to deny, and give answers to his objections, when it will become the duty of the judge to decide, in his discretion, whether the action shall be allowed to proceed.<sup>3</sup>

Alien enemies, though as a general rule they are not entitled to the use of our Courts, may sue in the Admiralty Division for wages if the ship on which they have been earned has come to this country under a British licence, so as to take away for a time the disqualifications of those on board.<sup>4</sup>

Although the master of a ship, as agent of the owners, is liable to be sued at common law by the seaman, he occupies a double capacity, for by the statute of 1861<sup>5</sup> he

<sup>1</sup> *The Chieftain*, Br. & L. 212.

<sup>2</sup> The following are some of the decisions on the capacities of persons suing for wages: *The Wharton*, 3 Hagg. 148, n., surgeon; *The Prince George*, *ib.* 376, purser; *Alison v. March*, 2 Ventris, 181, boatswain; *The Jane and Matilda*, 1 Hagg. 187, female cook and steward; *The Bulmer*, *ib.* 163, carpenter; *The Albert Crosby*, Lush. 44, apprentice; and see *Hook v. Moreton*, 1 Lord Ray. 397.

<sup>3</sup> *The Milford*, Swa. 362; *The Octavia*, Br. & L. 215; 6 L. T. N. S. 695; *The Nina*, 2 L. R. P. C. 38; 37 L. T. Ad. 17. For example of objection allowed, see *The Herzogin Marie*, Lush. 292.

<sup>4</sup> *The Maria Theresa*, 1 Dods. 303; *The Vrouw Mina*, 1 Dods. 234.

<sup>5</sup> A. C. A. 1861, s. 10, and M. S. A. 1854, s. 191.

is enabled to sue the ship on which he has served for his wages, and has in all respects the same rights as an ordinary seaman. And the right of action which foreign seamen have is equally possessed by foreign masters.<sup>1</sup>

The remuneration of pilots, being in the nature of wages, must be here touched on. By maritime law the Admiralty Division entertains claims by them for payment of sums due, whether pursued by an action *in rem* or *in personam*, unless a contract has been made and the work has been done within the body of a county. But if a claim is exorbitant, or the contract under which it arises was entered into by the master of the ship under the pressure of necessity, the Court, in the exercise of its equitable powers, will award a reasonable sum for the services which have been rendered.<sup>2</sup> Although the Court has not jurisdiction to entertain an action against a pilot for damage arising from any default on his part,<sup>3</sup> which must be prosecuted in the Common Law Division, yet, under Order XIX., r. 3, it clearly has power to pronounce for such a claim if pleaded as a set-off or a counterclaim to an action.

Wages must be earned in connection with a ship.

Secondly, the meaning of the word wages, and the times from which they begin to accrue and at which they are payable, have to be considered. To fall within the term wages, for the purpose of an action in the Admiralty Division, the sums sued for must have been earned on board the ship, not necessarily at sea, but in work on the vessel itself, or in duties connected with it.<sup>4</sup> Thus when a ship was being repaired, and the master, though he did not sleep on board, was busied about the concerns of the vessel, he was held entitled to receive his wages.<sup>5</sup> But it is obvious that

<sup>1</sup> *The Milford*, Swa. 262.

<sup>2</sup> *The Nelson*, 6 C. Rob. 227; *Ross v. Walker*, 2 Wils. 264; and see *The Dowthorpe*, 2 W. Rob. 73.

<sup>3</sup> *The Urania*, 5 L. T. N. S. 402; 1 Mar. L. C. (O. S.) 156.

<sup>4</sup> A. C. Act, 1861, s. 10; *The Chieftain*, Br. & L. 104.

<sup>5</sup> *The Chieftain*, Br. & L. 104.

the Court would not so strictly require the work to have been actually done on board by a master as by an ordinary seaman, since, in foreign ports especially, the duties of the former frequently consist in transacting business on shore. Sums in the nature of wages, but strictly the profits of a voyage, may be recovered as ordinary wages.<sup>1</sup>

There are certain sums which by the provisions of the Merchant Shipping Act, 1854, may be recovered as wages, viz., the expenses of subsistence of the voyage home when a British ship is sold or transferred abroad or the service is terminated abroad, and the master does not comply with the provisions of the Act as to furnishing the seamen with the means of returning home and so forth;<sup>2</sup> the expenses of a seaman left behind on a British ship or of an Englishman on a foreign ship who is left behind or discharged out of the United Kingdom;<sup>3</sup> allowance for short or bad provisions;<sup>4</sup> the moneys and effects of a deceased seaman who has been employed on a British ship;<sup>5</sup> expenses caused by illness from want of proper food and accommodation and medicines;<sup>6</sup> and double pay for every day, not exceeding ten, during which payment of wages is delayed without proper cause.<sup>7</sup>

The right to wages begins from the time at which work is commenced on the ship, or from the time specified in the agreement for the commencement of the work, or presence on board, whichever first happens.<sup>8</sup>

The payment of wages formerly depended on the earning of freight by the ship, and so produced the expressive rule that "freight is the mother of wages." But this is now no longer the law.<sup>9</sup>

<sup>1</sup> *The Frederick*, 5 C. Rob. 8.

<sup>2</sup> M. S. A. 1854, s. 205.

<sup>3</sup> M. S. A. 1854, s. 213.

<sup>4</sup> *Ib.* s. 223.

<sup>5</sup> *Ib.* s. 196.

<sup>6</sup> 30 & 31 Vict. c. 124, s. 7; M. S. A. 167.

<sup>7</sup> M. S. A. 1854, s. 187.

<sup>8</sup> *Ib.* s. 181.

<sup>9</sup> *Ib.* s. 183.

When payable.

By the Merchant Shipping Act, 1854, wages are to be paid in the case of a home trade ship within two days after the termination of the agreement or at the time of the seaman's discharge, whichever first happens, and in the case of all other ships within three days after the cargo has been delivered or within five days after the seaman's discharge, whichever first happens.<sup>1</sup> These provisions are subject, however, to the wages being due, which must depend on the terms of the contract of service.

Thus a seaman shipped under articles by which the crew agreed to serve on board the ship on a voyage from Shields to Alexandria, and, if required, to any port or ports in the Mediterranean, Black Sea, &c., and home to her final port of discharge in the United Kingdom; voyage not expected to exceed twelve months. The crew agreed also to conduct themselves, and to be at all times diligent, &c. "And in consideration of which services to be duly performed," the master agreed to pay to the crew as wages the sums against their names. Against the name of the plaintiff was placed the words "amount of wages per calendar month, 5*l.* 10*s.*" The seaman in question was left behind at Sulina through his own negligence, and two members of the Court were of opinion that the wages became vested and a debt at the end of each month, whilst the third judge held that the words "in consideration, &c.," were a condition precedent which must be duly fulfilled to entitle a seaman to claim his wages.<sup>2</sup>

End of service by wreck, &c.

If the voyage is terminated by a shipwreck or loss of the vessel at sea, or the services of the mariner are concluded before the period specified in the agreement of service by his being put on shore under a certificate of inability to proceed on the voyage,<sup>3</sup> or a master through

<sup>1</sup> M. S. A. 1854, s. 187.

<sup>2</sup> *Button v. Thompson*, L. R. 4 C. P. 330; 38 L. J. C. P. 225; and see also the cases cited in this case, and *Cutter v. Powell*, 2 Sma. L. C. 1.

<sup>3</sup> M. S. A. 1854, s. 185.

ill-health cannot longer perform his duties, wages are due up to the date of any of these events; and it has also been judicially held that temporary interruptions of the seaman's service do not take away the right to wages.<sup>1</sup>

Should the voyage be ended in consequence of the seizure of the ship for illegal trading, wages are nevertheless due for the voyage if the seamen are not parties to the breach of the law.<sup>2</sup>

If the seaman leaves his ship to enter the Royal Navy, <sup>Entering Royal Navy.</sup> his wages are due up to the date of such entry, and if they are not paid the accountant-general or the seamen himself may sue for them.<sup>3</sup>

If a seaman is wrongfully dismissed before the end of <sup>Wrongful dismissal.</sup> the voyage or of his term of employment, his wages are due for the whole of the voyage or until the period for which he was engaged terminates, if he has not before that time found new and equally lucrative employment.<sup>4</sup> Any expenses which may be incurred by the seaman who is thus dismissed, in reaching his own country if he is discharged at a distance from it,<sup>5</sup> and in maintaining<sup>6</sup> himself until he obtains fresh employment, are recoverable with the wages.

The Court has also jurisdiction to award a sum as damages in respect of a wrongful dismissal; but, if any balance of wages, subsistence money, and travelling expenses are awarded, there can seldom be any further element of damages to be considered.<sup>7</sup>

<sup>1</sup> *The Rajah of Cochin*, Swa. 473.

<sup>2</sup> *Delamarier v. Wintaringham*, 4 Camp. 186; *Bergstrom v. Mills*, 3 Esp. 36.

<sup>3</sup> M. S. A. 1854, ss. 214, 215.

<sup>4</sup> *The Elizabeth*, 2 Dods. 403; *The Exeter*, 2 C. Rob. 261; *The Beaver*, 3 C. Rob. 92; *The Camilla*, Swa. 312.

<sup>5</sup> *The Elizabeth*, 2 Dods. 403.

<sup>6</sup> *The Frederick*, 1 Hagg. 211; *The Madonna D'Idra*, 1 Dods. 37; *The Constanca*, 15 W. R. 183.

<sup>7</sup> *The Great Eastern*, L. R. 1 Ad. 384; 36 L. J. Ad. 15; *The Blessing*, L. R. 3 P. D. 35.

As a general rule, the cost of the seaman's maintenance after the commencement of the suit is recovered as costs in the cause.<sup>1</sup>

Cases in which a seaman is discharged before the voyage has commenced or one month's wages are earned are now governed by statute law; for, the Merchant Shipping Act states that if a seaman who has signed an agreement is under such circumstances dismissed without his consent or fault, compensation may be recovered in addition to any wages which he has earned, but limited to one month's pay at the most.<sup>2</sup> By maritime law the Court of Admiralty could not entertain a suit for wages, or strictly speaking for damages, when the voyage was abandoned by the owners before it had begun.<sup>3</sup>

Both by maritime<sup>4</sup> and statute law a seaman cannot by agreement forfeit his claim to wages, or any remedy for their recovery, and if any such agreement is made it is legally inoperative;<sup>5</sup> and it has been an immemorial and benevolent practice of the Court if there is a doubt about a contract to give the seaman the benefit of it.<sup>6</sup>

Disburse-  
ments.

The disbursements by the master on account of the ship can be recovered in a suit for wages.<sup>7</sup> The term disbursements includes "all proper expenditure made by the master on the ship,"<sup>8</sup> and must generally be explained by reference to what are necessaries for a ship, which are discussed on a subsequent page (p. 73). In addition, however, to necessaries strictly so called, some claims of a wider nature have been allowed by the Court, such as the costs incurred by the master in defending himself against a

<sup>1</sup> *The Carolina*, 34 L. T. N. S. 399.

<sup>2</sup> M. S. A. 1854, s. 167.

<sup>3</sup> *The City of London*, 1 W. Rob. 88.

<sup>4</sup> *The Juliana*, 2 Dods. 504.

<sup>5</sup> M. S. A. 1854, s. 182.

<sup>6</sup> *The Nonpareil*, Br. & L. 355.

<sup>7</sup> A. C. Act, 1861, s. 10.

<sup>8</sup> *The Feronia*, L. R. 2 Ad. 65; 37 L. J. Ad. 60.

false charge of murder arising out of the performance of his duty.<sup>1</sup>

It was definitely laid down by Dr. Lushington that a master could not properly claim for disbursements unless he had actually paid the sum for which he was suing.<sup>2</sup> This rule has been, however, somewhat relaxed of late years, when it is clear that the master is making a genuine demand in respect of claims for which he is clearly liable. The practice in such cases is to keep the fund within the jurisdiction of the Court until the master has in fact discharged the liabilities and the vouchers are placed in the registry, or to make the owners or claimants to the property give security for the amount claimed by the master in respect of his liabilities, and then to allow the fund or ship to be paid out or released.<sup>3</sup> The claim for disbursements is limited to masters, and cannot be enforced by a mate;<sup>4</sup> and both in suits for wages and disbursements the claimant should furnish correct accounts before commencing the action.<sup>5</sup>

Both seaman<sup>6</sup> and master<sup>7</sup> have a maritime lien on the ship and freight<sup>8</sup> for wages and disbursements, which arises not from contract, but from services rendered<sup>9</sup>; but, as between them, the former has the preference should their claims ultimately come into conflict.<sup>10</sup> This lien is

<sup>1</sup> *The Jane Seddon*, L. R. 1 Ad. 62; 35 L. J. Ad. 117.

<sup>2</sup> *The Chieftain*, Br. & L. 104; 32 L. J. Ad. 106; *The Edwin*, Br. & L. 281; 33 L. J. Ad. 197.

<sup>3</sup> *The Feronia*, 2 L. R. Ad. 65; 37 L. J. Ad. 60; *The Marco Polo*, 24 L. T. 804; 1 Asp. M. C. N. S. 54; *The Limerick*, L. R. 1 P. D. 292, 311. See also *Bristow v. Whitmore*, 9 H. of L. Cas. 391.

<sup>4</sup> *The Victoria*, 37 L. J. Ad. 12.

<sup>5</sup> *The Fleur de Lis*, L. R. 1 Ad. 39.

<sup>6</sup> *The Neptune*, 1 Hagg. 238; *The Sydney Cove*, 2 Dods. 13; *The Golubchick*, 1 W. Rob. 148.

<sup>7</sup> *The Arab*, 5 Jur. N. S. 417; *The Mary Anne*, 1 L. R. Ad. 8; 35 L. J. Ad. 6: the right against the ship for disbursements is a creation of statute, and is not a maritime lien.

<sup>8</sup> *The Mary Ann*, 9 Jur. 194; *The Riby Grove*, 2 W. Rob. 52.

<sup>9</sup> *The Chieftain*, Br. & L. 104; 32 L. J. Ad. 106.

<sup>10</sup> *The Salacia*, Lush. 543; 32 L. J. Ad. 41. As to lien, *ante*, p. 6.



not lost by the fact that the master is also part owner of the vessel,<sup>1</sup> or that he was appointed by a person having at the time of such appointment a fraudulent possession of the ship, if there was no collusion between him and the master.<sup>2</sup>

The matters which form the ground for defences to an action for wages as a whole, or which may cause some deduction from such a claim, are numerous. They arise either from the general principles of maritime law or from statutory enactments. The following are some of the leading defences and matters for deduction, which are nearly all based on the non-performance or improper performance of a seaman's duties :

Desertion,—that is to say, leaving a ship without an intention of returning, or without the consent and leave of the master, or without a reasonable and urgent cause.<sup>3</sup>

The neglect of a seaman to join his ship without reasonable cause, or to proceed to sea, or absence without leave;<sup>4</sup> quitting a ship in the port of delivery, and before she is placed in security, without leave;<sup>5</sup> wilful or continued wilful disobedience;<sup>6</sup> wilful damage to ship, stores, or cargo, or embezzlement of the same;<sup>7</sup> acts of smuggling, for which the offender is convicted;<sup>8</sup> wilful refusal to work, neglect to work;<sup>9</sup> having been imprisoned on the

<sup>1</sup> *The Feronia*, 2 L. R. Ad. 65; 37 L. J. Ad. 6.

<sup>2</sup> *The Edwin*, Br. & L. 281; 33 L. J. Ad. 197.

<sup>3</sup> M. S. A. 1854, s. 243 (1); *The Frederick*, 1 Hagg. 211; *The Castalia*, *ib.* 59; *The Minerva*, *ib.* 347; *The Agincourt*, *ib.* 279; *The Amphitrite*, 2 Hagg. 403; *The Ealing Grove*, *ib.* 16; *The Pearl*, 5 C. Rob. 224; *The Westmoreland*, 1 W. Rob. 216; *The Two Sisters*, 2 W. Rob. 125; *The Roebuck*, 37 L. T. N. S. 274.

<sup>4</sup> M. S. A. 1854, s. 243 (2).

<sup>5</sup> *Ib.* s. 243 (3).

<sup>6</sup> *Ib.* s. 243 (4) and (5). And as to refusal to return by maritime law: *The Bulmer*, 1 Hagg. 163.

<sup>7</sup> M. S. A. s. 243 (8).

<sup>8</sup> *Ib.* s. 243 (9).

<sup>9</sup> *Ib.* s. 186.

voyage;<sup>1</sup> false statement as to name of last or last alleged ship;<sup>2</sup> and illness caused by the wilful neglect or default of the seaman himself.<sup>3</sup> All these things cause a partial forfeiture of wages. Fines for acts of misconduct,<sup>4</sup> and the costs incurred in procuring the legal punishment of a seaman,<sup>5</sup> may also be deducted.

Want of exertion to the utmost to save ship, cargo, and stores, in case of the wreck or loss of a ship;<sup>6</sup> a tender of wages in cash and acceptance of a bill instead;<sup>7</sup> the promotion, directly or indirectly, of insubordination on board ship;<sup>8</sup> an engagement under an illegal contract;<sup>9</sup> *mala fides* in the management of the ship; gross misconduct, as distinguished from mere want of judgment or intelligence;<sup>10</sup> particular neglect, the proximate cause of injurious consequences to a ship or the owners;<sup>11</sup> constant drunkenness, and occasional drunkenness if accompanied by neglect of duty,<sup>12</sup> may wholly extinguish a claim for wages.

If a seaman on a foreign ship is a plaintiff, it is a good defence that under the terms of his contract of service he is debarred from recovering his wages by the law of the

<sup>1</sup> *Ib.* s. 251.

<sup>2</sup> *Ib.* s. 256.

<sup>3</sup> 30 & 31 Vict. c. 124, s. 8.

<sup>4</sup> M. S. A. 1854, s. 256.

<sup>5</sup> *Ib.* s. 251.

<sup>6</sup> *Ib.* s. 183.

<sup>7</sup> *The William Money*, 2 Hagg. 136.

<sup>8</sup> *The Marina*, L. R. 5 P. D. 254; 50 L. J. Ad. D. 33.

<sup>9</sup> *The Vanguard*, 6 C. Rob. 207; *The Malta*, 2 Hagg. 158. Blockade running is not an offence against municipal law: *The Helen*, 1 L. R. Ad. 1; *The Santissima Trinidad*, 7 Wheaton, 340 (A).

<sup>10</sup> *The New Phoenix*, 1 Hagg. 98; *The Gondolier*, 3 Hagg. 191; *The Blake*, 1 W. Rob. 73; *The Camilla*, Swa. 312; 7 L. T. N. S. 647; *The Atlantic*, Lush. 566; *The Joseph Dexter*, 20 L. T. N. S. 820; *The Roebuck*, 31 L. T. N. S. 274; *The Dunmore*, 32 L. T. N. S. 340.

<sup>11</sup> *The Duchess of Kent*, 1 W. Rob. 283.

<sup>12</sup> *The Exeter*, 2 C. Rob. 261 (269); *The Thomas Worthington*, 3 W. Rob. 128; *The Roebuck*, 31 L. T. N. S. 274; *The Macleod*, 50 L. J. Ad. 6.

country where the contract was made, or of the flag under which he sails.<sup>1</sup>

When a master makes a claim for wages or disbursements, the owner of the ship can set up any set-off or counterclaim which he may have against him with reference to the ship;<sup>2</sup> but, when this course is taken, one or two particular items cannot alone be relied upon, but the general account, if opened at all, must be gone into before the Registrar and Merchants.<sup>3</sup> And this rule applies as much to a mortgagee who intervenes in the suit, or a purchaser, as to the original owner.<sup>4</sup> The right to counterclaim under the Judicature Act<sup>5</sup> is given in respect of any matter which may conveniently be disposed of in the pending action: thus, a counterclaim for damages for the loss of a ship through the negligence of the master has been held a proper one;<sup>6</sup> and the propriety of the counterclaim will probably be usually determined by limiting it to matters connected with the ship in respect of which the action is brought.<sup>6</sup>

A recent statute has further enlarged the powers of the Court by enabling it to rescind any contract between the owner or master and the seaman, upon such terms as may seem just.<sup>7</sup>

Restrictions on actions in High Court.

No suit for wages under £50 can be brought in the Admiralty Division, unless the owner of the ship is declared bankrupt, or unless the ship is under arrest or is sold by the authority of the Court, or the case is referred to the Court of Justices, or unless neither the master or owner is or resides within twenty miles of the place where the

<sup>1</sup> *The Johann Friedrich*, 1 W. Rob. 35; *The Nina*, L. R. 2 P. C. 38; 37 L. J. Ad. 17.

<sup>2</sup> M. S. A. 1854, s. 191.

<sup>3</sup> *The Glentanner*, Lush. 415.

<sup>4</sup> *The City of Mobile*, L. R. 4 Ad. 131; 43 L. J. Ad. 41.

<sup>5</sup> O. XIX. r. 3.

<sup>6</sup> *The Sir Charles Napier*, L. R. 5 P. D. 73; 49 L. J. Ad. 23.

<sup>7</sup> 43 & 44 Vict. c. 16, s. 8.

seaman is put ashore.<sup>1</sup> The restriction of actions for wages in the High Court to sums exceeding £150 by a liability to be condemned in costs under the provisions of the County Courts Act, 1868,<sup>2</sup> has now been taken away by the operation of the Rules under the Judicature Acts.<sup>3</sup>

An action for wages in the Admiralty Division must be commenced within six years after the cause of action has accrued, unless the suitor is under some disability.<sup>4</sup>

<sup>1</sup> M. S. A. 1854, s. 189; *The Blakeney*, 5 Jur. N. S. 418.

<sup>2</sup> 31 & 32 Vict. c. 71, ss. 3 & 9.

<sup>3</sup> See *ante*, p. 15.

<sup>4</sup> 4 Anne, c. 16, ss. 17, 18, 19.

## CHAPTER V.

### NECESSARIES.

Jurisdiction of the Court.

ALTHOUGH from time to time the Court of Admiralty claimed a jurisdiction over actions for necessaries, it was decided once for all in 1835<sup>1</sup> that it did not possess it. Its jurisdiction, therefore, now rests solely upon the provisions of two statutes. These are as follows: "The High Court of Admiralty shall have jurisdiction to decide all claims and demands whatsoever . . . for necessaries supplied to any foreign ship or sea-going vessel, and to enforce payment thereof whether such ship or vessel may have been within the body of a county or upon the high seas when the necessaries were furnished in respect of which such claim was made."<sup>2</sup> "The High Court of Admiralty shall have jurisdiction over any claim for building, equipping, or repairing of any ship, if at the time of the institution of the cause the ship or the proceeds thereof are under the arrest of the Court . . . . ."

. . . and over any claim for necessaries supplied to any ship elsewhere than in the port to which the ship belongs, unless it is shown to the satisfaction of the Court that at the time of the institution of the cause any owner or part owner of the ship is domiciled in England or Wales."<sup>3</sup>

What are

The definition of the word necessaries has been judicially

<sup>1</sup> *The Neptune*, 3 Knapp, P. C. 94.

<sup>2</sup> 3 & 4 Vict. c. 65, s. 6.

<sup>3</sup> A. C. A. 1861, ss. 4 and 5.

given as "all things fit and proper for the service in which a vessel is engaged, whatever the owner of that vessel as a prudent man would order if present at the time;"<sup>1</sup> though primarily meaning indispensable repairs, anchors, cables, sails, or provisions,<sup>2</sup> the term has now, it is clear, a wider signification. There is no distinction between necessaries for the ship and necessaries for the voyage, and all things reasonably requisite for the particular adventure on which the ship is bound are comprised in this category.<sup>3</sup> And money advanced to pay for necessaries, whether in cash or by bill, gives the lender the same rights as if he had actually supplied the necessary articles themselves.<sup>4</sup>

The claim is valid even if the necessaries have been supplied on the personal credit of the master.<sup>5</sup> But it is important to bear in mind that as the liability of the owner depends not upon his ownership of the vessel, but upon a contract made with the supplier by the master, who is the agent of the owner, the master must, to make the owner liable, have either an actual authority from him, or have been held out by him as his master, so that the claimant has been induced to supply the necessaries on the credit of the owner.<sup>6</sup>

The following claims have been judicially decided to be valid in actions for necessaries, viz. claims in respect of anchors, cables, rigging and things *ejusdem generis*,<sup>7</sup> coals,<sup>8</sup> provisions,<sup>9</sup> clothing,<sup>10</sup> slops for the crew,<sup>11</sup> screw propeller,<sup>12</sup>

<sup>1</sup> *Webster v. Seekamp*, 4 B. & Ald. 352.

<sup>2</sup> *The Sophie*, 1 W. Rob. 368; *The Comtesse de Fregeville*, Lush. 329.

<sup>3</sup> *The Riga*, L. R. 3 Ad. 516; 41 L. J. Ad. 39.

<sup>4</sup> *The Onni*, Lush. 154; *The Riga, supra*; *The Anna*, L. R. 1 P. D. 253; 45 L. J. Ad. 98.

<sup>5</sup> *The Onni*, Lush. 154; *The Anna*, L. R. 1 Ad. 253; 45 L. J. Ad. 98.

<sup>6</sup> *The Great Eastern*, L. R. 2 Ad. 88; 3 Asp. M. C. 58.

<sup>7</sup> *The Sophie*, 1 W. Rob. 368.

<sup>8</sup> *The West Friesland*, Swa. 454.

<sup>9</sup> *The N. R. Gosfabrik*, Swa. 334.

<sup>10</sup> *The W. F. Safford*, Lush. 69.

<sup>11</sup> *The Feronia*, L. R. 2 Ad. 65; 37 L. J. Ad. 60.

<sup>12</sup> *The Hecla*, 1 Spk. 441.

coppering,<sup>1</sup> premium of insurance of freight,<sup>2</sup> money supplied to pay a shipwright's bill,<sup>3</sup> and dock dues.<sup>4</sup> On the other hand, the Court has dismissed claims for money advanced to a master to pay averages,<sup>5</sup> and a bottomry bond<sup>6</sup> and the travelling expenses of a third person to aid a master in a collision action;<sup>7</sup> and it will also not assist an applicant unless the necessaries in respect of which the action is brought are particularized.<sup>8</sup>

Prelimi-  
naries to  
liability.

To render a ship liable in an action she must further be either a foreign ship<sup>9</sup> the owner of which may or may not be temporarily in the same port, or a British ship the owner of which is not domiciled in this country,<sup>10</sup> which fact to be a good defence must be proved before judgment, since, if it is subsequently brought to the knowledge of the Court, it will not reverse its previous decree.<sup>11</sup> The necessaries must not have been supplied to a foreign ship in a foreign port;<sup>12</sup> but it is now settled law that this rule does not exclude claims for necessaries supplied at a British colonial port.<sup>13</sup> In the case of a British ship they must not have been furnished in the port to which she belongs.<sup>14</sup>

The fact that the claimant is the agent of a foreign ship

<sup>1</sup> *The Turliani*, 32 L. T. N. S. 841; 2 Mar. L. C. N. S. 603.

<sup>2</sup> *The Riga*, L. R. 3 Ad. 516; 41 L. J. Ad. 39.

<sup>3</sup> *The Albert Crosby*, L. R. 3 Ad. 37.

<sup>4</sup> *The St. Lawrence*, L. R. 5 P. D. 250; 49 L. J. Ad. D. 82.

<sup>5</sup> *The Aaltje Willemina*, L. R. 1 Ad. 107.

<sup>6</sup> *The Onni*, Lush. 154.

<sup>7</sup> *The Bonne Amelie*, L. R. 1 Ad. 19; 35 L. J. Ad. 115.

<sup>8</sup> *The Riga*, *supra*.

<sup>9</sup> It has been held that a ship beneficially owned by foreigners, but carrying a British flag and registered as a British vessel when the necessaries were supplied, is a foreign ship: *The Princess Charlotte*, Br. & L. 75.

<sup>10</sup> *The Pacific*, Br. & L. 243.

<sup>11</sup> *Ex parte Michael*, L. R. 7 Q. B. 658; 41 L. J. Q. B. 349.

<sup>12</sup> *The India*, 32 L. J. Ad. 185.

<sup>13</sup> *The Wataga*, Swa. 165; *The Anna*, 45 L. J. Ad. 98; L. R. 1 P. D. 253; 46 L. J. Ad. 15 (C. A.).

<sup>14</sup> A. C. A. 1861, s. 5.

in a British port does not prevent him from bringing an action against such ship, either for necessaries or for money paid by him to those who have supplied necessaries. But, if the amount sought to be recovered is a mere balance of a general account between principal and agent, the claim as one for necessaries is inadmissible. A co-owner is in the same position as a stranger, if he is not interested in the results of the particular voyage when the necessaries were supplied.<sup>1</sup>

Persons who have supplied a foreign ship with *Liens* necessaries have a maritime lien upon her from the moment that the articles are supplied;<sup>2</sup> but, under the Act of 1861, there is no such lien on a British ship, and the vessel does not become chargeable with the debt till the suit is actually instituted;<sup>3</sup> consequently there can be no claim against a ship which has been sold, even with notice of such a claim in respect of which an action has not been commenced,<sup>4</sup> and a want of caution in supplying the necessaries may, it would seem, cause a postponement of claims to others more carefully begun.<sup>4</sup>

A *bonâ fide* transfer, however, of a foreign ship against which there is an outstanding claim for necessaries to a British owner does not destroy the existing lien,<sup>5</sup> which is equally valid after a transfer of a foreign ship to a British owner, and subsequent to the commencement of an action in respect of the necessaries.<sup>6</sup> It is also a point of some importance that when there exists a valid claim for necessaries, and a bottomry bond on the ship

<sup>1</sup> *The Underwriter*, 25 L. T. N. S. 279; 1 Asp. M. C. N. S. 127.

<sup>2</sup> *The Ella A. Clerk*, Br. & L. 32; 32 L. J. Ad. 211.

<sup>3</sup> *The Pacific*, Br. & L. 243; *The Troubadour*, L. R. 1 Ad. 302; *The Two Ellens*, L. R. 4 P. C. 160; 41 L. J. Ad. 33.

<sup>4</sup> *The Aneroid*, L. R. 2 Ad. D. 189; 47 L. J. Ad. 15.

<sup>5</sup> *The Pantheus*, 1 Asp. M. C. N. S. 133; 25 L. T. N. S. 289.

<sup>6</sup> *The Ella A. Clerk*, *sup.*; *The Princess Charlotte*, Br. & L. 75; 33 L. J. Ad. 188.



has been given to the person who supplied them in respect of his claim, the latter is merged in the claim under the bond, and any action should be brought in respect of the bond, and not of the necessaries, which would be irregular.<sup>1</sup>

Claims for building, equipping, or repairing a ship.

If the claim is one for building, equipping, or repairing a ship, that is, for work done on the ship, and not for things supplied for it, she must, when the cause was instituted, have been under the arrest of the Court in order to give it jurisdiction.<sup>2</sup>

As shipwrights have at common law a purely possessory and passive lien upon a ship or article on which their labour has been expended, which from its nature can only be enforced by retaining possession of the thing on which the work has been done,<sup>3</sup> and as the effect of the statutory law is merely in a certain event to give them a right to sue in the Admiralty Division, it is important if a suit be instituted against a ship that they should, in order to have any priority to mortgagees, be in actual *de facto* possession of the ship at the commencement of the action.<sup>4</sup> The Court has, however, compelled a person with a possessory lien to relinquish it, but whilst so doing it will protect his interests.<sup>5</sup> And it is also to be remarked that if a master pays off a material man, or another person advances money for the purpose, the master would have a claim against the ship for disbursements, or the person who advanced the money for necessaries.<sup>6</sup>

The County Courts have jurisdiction over claims up to £150 for necessaries.<sup>7</sup>

<sup>1</sup> *The Elpis*, L. R. 4 Ad. 1 ; 42 L. J. Ad. 43.

<sup>2</sup> A. C. Act, 1861, s. 4.

<sup>3</sup> *The Thames Ironwork Co. v. The Patent Derrick Co.* 1 John. & H. 93.

<sup>4</sup> *The Scio*, L. R. 1 Ad. 353.

<sup>5</sup> *The Harmonie*, 1 W. Rob. 178.

<sup>6</sup> *The Albert Crosby*, L. R. 3 Ad. 37.

<sup>7</sup> 32 & 33 Vict. c. 71, s. 3.

## CHAPTER VI.

### POSSESSION, CO-OWNERSHIP, AND ACCOUNTS.

THE jurisdiction of the Admiralty Division in actions of possession is exercised for a fourfold purpose: (1) to place claimants in possession of, (2) or of the earnings of ships to which they may be entitled; (3) to enable a ship to be employed; (4) to examine accounts between co-owners, and to apportion the earnings after such examination.<sup>1</sup> In all these cases, if necessary, the Court can order the vessel the subject of dispute to be sold; but it is very reluctant to do so at the instance of part owners who do not possess a majority of shares. But, where one plaintiff had agreed to become a part owner, and other plaintiffs also part owners, provided the first plaintiff was appointed master, and he was, after being so appointed, wrongfully dismissed, the Court considered that the defendants had acted so inequitably that, after giving them the option of purchasing the plaintiff's shares at a valuation, an order was made that the ship should be appraised by the marshal and sold.<sup>2</sup> Moreover, since all questions as to the title to or ownership of any vessel, or to the proceeds thereof, in the registry, fall within the jurisdiction of this Division, this power of sale is of peculiar use in actions of possession.<sup>3</sup>

<sup>1</sup> A. C. A. 1861, s. 8. The first two divisions chiefly embrace disputes between rival claimants; the third and fourth, disputes between co-owners.

<sup>2</sup> *The Nelly Schneider*, L. R. 3 P. D. 152; 4 Asp. M. C. N. S. 54.

<sup>3</sup> 3 & 4 Vict. c. 63, s. 4.

Foreign  
vessels.

But, as regards foreign vessels, though the Court possesses the same jurisdiction derived from its original powers as a maritime Court, yet it will not interfere in questions touching the ownership of foreign vessels, unless with the consent of the parties to the dispute, or of the representative in England of the foreign state to which the ship belongs, and even then with some reluctance.<sup>1</sup>

Whether a claimant is or is not entitled to the possession of a ship or her earnings, depends wholly upon the facts of each particular case, and the principles of law applicable thereto. A discussion of these principles is quite without the scope of this work, since they concern every branch of law: thus, the right to possession of a vessel may turn upon the question of fraud or no fraud in a sale, as in the recent case of *The Horlock*,<sup>2</sup> which depended on the effect of a fraudulent bill of sale, a matter which involves doctrines of the most general description.

Equitable claims and equitable defences are recognised by the Court; but a distinction has been drawn between the recognition of equities after it has been set in motion by persons claiming legal rights, and allowing its procedure to be used to enforce equities in the first instance.<sup>3</sup>

Possession  
given in  
order to  
employ  
ship.

The Court will decree possession of a ship to the owners of the majority of the shares in her, even if the owners of the minority are willing to give security to the owners of the majority, in order that she may be employed for the purpose for which she was built, that is to say, to navigate the seas, not to lie at home unused.<sup>4</sup> But at the same time it will compel those to whom possession is

<sup>1</sup> *The See Reuter*, 1 Dods. 24; *The Martin of Norfolk*, 4 C. Rob. 293; *The Evangelistria*, L. R. 2 P. D. 241; 35 L. T. N. S. 410; *The Agincourt*, L. R. 2 Ad. D. 239. The Court refused to interfere when a British part owner of a foreign vessel moved to arrest it, to obtain bail for safe return: *The Graff Arthur Bernstorff*, 2 Spk. 31.

<sup>2</sup> *The Horlock*, L. R. 2 P. D. 243; 47 L. J. Ad. 5.

<sup>3</sup> *The Victoria*, Swa. 408; *The Rose*, L. R. 4 Ad. 6; 42 L. J. Ad. 11; and see J. A. 1873, s. 25, sub-s. 11.

<sup>4</sup> *The Elizabeth and Jane*, 1 W. Rob. 278; *The Kent*, Lush. 495.

allowed to give security to the minority to the amount of their interest.<sup>1</sup> To enforce this security the minority must bring an action of Restraint to prevent the ship from proceeding to sea until security is given by the other co-owners, to the extent of the plaintiff's interest, for her safe return, to effect which the vessel may be arrested, and a bond entered into payable in default of the return of the ship from her voyage.<sup>2</sup> But the minority, since they do not contribute towards the expenses of the voyage, cannot share in its profits.<sup>3</sup> Owners who do not appear as plaintiffs in such actions are presumed to be content with the possession or occupation of the vessel,<sup>4</sup> and to acquiesce in an application for a sale of which notice has been given them.<sup>5</sup>

Action of  
restraint.

The Court will order accounts to be taken, either as a step in an action or in a suit having the taking of accounts for its sole object,<sup>6</sup> but they will not be investigated to a later period than the date of the issuing of the writ in the action.<sup>7</sup> The Court also will apportion and allot the shares to which claimants may be respectively entitled, or order the ship to be sold and the proceeds divided, or the freight to be brought into Court for the purpose of division:<sup>8</sup> and it often seeks to end disputes between co-

Accounts  
between  
co-owners.

<sup>1</sup> *The Apollo*, 1 Hagg. 306.

<sup>2</sup> *Houston v. Hebden*, 1 Wils. 101; *The Apollo*, *sup.* A mortgagee, unless in possession, will not be allowed to bring an action of restraint against the will of a charterer: *The Innisfallen*, L. R. 1 Ad. 72; 35 L. J. Ad. 110; and a motion before the judge for an order to this effect is probably as effectual as an action of restraint.

<sup>3</sup> An. 2 Ch. Ca. 36.

<sup>4</sup> *The Valiant*, 1 W. Rob. 64. When a managing owner did not appear to an action *in rem*, the Court added him as a defendant under Order XVI., r. 13, but deferred making any order for the sale of the vessel until after the reference and investigation of his accounts: *The Native Pearl*, 37 L. T. 542; 3 Asp. M. C. 515.

<sup>5</sup> *The Albion*, 6 L. T. 164; 1 Asp. M. C. (O. S.) 206.

<sup>6</sup> *The Idas*, Br. & L. 65.

<sup>7</sup> *The Eider*, 40 L. T. 463; 4 Asp. M. C. 104.

<sup>8</sup> *The Meggie*, L. R. 1 Ad. 77. The Court has power to order the sale of a ship the property in which becomes by death or marriage vested in a person not qualified to be the owner of a British ship: A. C. A. 1861, s. 12; M. S. A. 1854, ss. 62, 63, 64, 65.

owners by giving the majority the option of buying the shares of the minority at a valuation, so as to prevent the necessity for a sale of the ship. The Court has jurisdiction over the interests of persons who are not co-owners at the time of the commencement of the action, if it arises out of a previous co-ownership in which they were concerned.<sup>1</sup> Its jurisdiction is exercised as liberally as possible; thus, in an action for a sale of the ship and an investigation of the accounts, the Court has allowed a counterclaim for damages alleged to have been sustained by the defendant co-owners by a wrongful act of the plaintiffs in the management of the ship to be investigated.<sup>2</sup> And when a master, who was a part owner, was suing for his wages, the defendants were allowed to set up a counterclaim in respect of the co-ownership accounts, and to have them investigated in the action for wages.<sup>3</sup> The Court will also, if necessary, appoint as receiver some independent person.<sup>4</sup>

Restitu-  
tion of  
ships or  
goods  
seized by  
pirates.

When goods have been piratically seized and afterwards recovered, the Court will order their restitution to their original owners if they apply within a reasonable time, even though they may have come into the hands of a third person.<sup>5</sup>

And, if the ship of a pirate has been transferred to a *bond fide* purchaser for valuable consideration, and has not been taken by the pirate from other persons, it will, if seized by the Crown, be restored by an order of the Court to such purchaser.<sup>6</sup>

<sup>1</sup> *The Lady of the Lake*, L. R. 3 Ad. 29; 39 L. J. Ad. 40.

<sup>2</sup> *The Ceylon*, 18 L. T. N. S. 417.

<sup>3</sup> *The City of Mobile*, L. R. 4 Ad. 191; 43 L. J. Ad. 41.

<sup>4</sup> *The Amphill*, L. R. 5 P. D. 226.

<sup>5</sup> Bacon's Abridgment, art. Piracy, vol. vi. p. 173, 7th ed.; *The Hercules*, 2 Dods. 253.

<sup>6</sup> *The Telegrapho*, L. R. 3 P. C. 673; 40 L. J. Ad. 18.

## CHAPTER VII.

### MORTGAGE.

THE Admiralty Division, which possessed no original jurisdiction over mortgages of ships,<sup>1</sup> has now by statute jurisdiction in respect of any mortgage duly registered according to the provisions of the Merchant Shipping Act, 1854, whether or not the ship or proceeds are under the arrest of the Court.<sup>2</sup> But, if any ship, such as a foreign one the mortgage of which is unregistered, is under the arrest of the Court, or the proceeds have been brought into the registry, then a jurisdiction is founded.<sup>3</sup> By a mortgage the mortgagee acquires a right to the ownership of a vessel in a certain event, since it is a transfer of all the mortgagor's interest by way of security for the repayment of a loan,<sup>4</sup> it having been enacted that meanwhile a mortgagee by reason of his mortgage shall not be deemed to be the owner of the ship, nor shall the mortgagor be deemed to have ceased to be the owner of such mortgaged ship, except so far as may be necessary for making it available as a security for the mortgage debt.<sup>5</sup> The mortgagee

<sup>1</sup> *The Neptune*, 3 Hag. 129 (132).

<sup>2</sup> A. C. A. 1861, s. 11. As to registration of mortgages, see M. S. A. 1854, ss. 66—75; and M. S. A. 1862, s. 3.

<sup>3</sup> 3 & 4 Vict. c. 65, s. 3. Such an arrest must be *de jure* as well as *de facto*: *The Evangelistria*, 35 L. T. N. S. 410; 46 L. J. Ad.; 1 L. R. 2 P. D. 241; *Taylor v. Caryl*, 20 Howard, 583 (599) (A.).

<sup>4</sup> *Keith v. Burrows*, L. R. 1 C. P. D. 722; 45 L. J. C. P. 1876; L. R. 2 C. P. D. 163; 46 L. J. C. P. D. 452; 46 L. J. C. P. (H. L.) 801; L. R. 2 App. Cas. 636.

<sup>5</sup> M. S. A. 1854, s. 70.

Rights of  
charterers.

becomes entitled to the freight due when he takes actual or constructive possession of his security; he cannot, therefore, recover back from the mortgagor any freight which he has allowed him to receive since the date of the loan, and before he takes possession.<sup>1</sup> Nor can the charterers take from the freight payable by them any sum in respect of advances which the master has agreed shall be deducted from such freight, for the sum which it is agreed by the charter-party shall be advanced and taken from the freight is the only amount by which the freight may be reduced.<sup>2</sup> Meanwhile the mortgagor retains all the rights and powers of ownership, and his contracts in relation to the ship are valid as against the mortgagee so long as they do not impair the value of his security; therefore, if a ship under charter is arrested at the suit of a mortgagee, the charterer on motion will obtain an order for its release.<sup>3</sup> But, if his interests are likely to be prejudiced, the Court will exercise its equitable powers by permitting the fulfilment of such contracts only on certain terms: anything, however, which is at all an attempt by the mortgagee to get better terms from the mortgagor by invoking the aid of the Court will not be countenanced by it. The burden of satisfying the Court that the mortgagee's security will be impaired rests on him, and must be shown by very satisfying evidence. It follows, therefore, if a mortgagee arrests a vessel, and cannot then prove that his security will be lessened, that the Court on motion by the owners or charterers will order the release of the ship, generally with costs, it may be even with damages, against the mortgagee.<sup>4</sup>

<sup>1</sup> *Liverpool Marine Co. v. Wilson*, L. R. 7 Ch. 507; 41 L. J. Ch. 798; *Wilson v. Wilson*, L. R. 14 Eq. 32; 41 L. J. Ch. 423.

<sup>2</sup> *Tanner v. Phillips*, 42 L. J. Ch. 125; 27 L. T. 717.

<sup>3</sup> *Collins v. Lamport*, 4 De G. J. & S. 500; 34 L. J. Ch. 196; *The Innisfallen*, L. R. 1 Ad. 72; 35 L. J. Ad. 110; *The Fanchon*, L. R. 5 P. D. 173; 42 L. T. 483.

<sup>4</sup> *The Maxima*, 39 L. T. 112; 4 Asp. M. C. 21; *The Cathcart*, L. R. 1 Ad. 314.

Although it has been enacted that a mortgagee of a British ship only becomes the owner for the purposes of the mortgage, so that he may be protected from claims for which he would otherwise be liable as owner in possession,<sup>1</sup> yet the mortgage gives him a right, as has been pointed out, to the actual possession of the ship at any time for the purposes of his security. Accordingly, though mortgages may be unregistered, or registered according to the provisions of the Merchant Shipping Act, 1854, yet an unregistered mortgage is good against all persons except registered transferees and mortgagees. Accordingly, as between two unregistered mortgagees, or an equitable mortgagee and the assignee of the freight, the first in time would have the first claim to the ship and freight; and, as between a mortgagee of the freight and an unregistered and subsequent mortgagee of the ship, the latter would have the first claim to the ship and freight. But, as between a registered and unregistered mortgagee, the former, though he may be last in point of time, is first in point of rank.<sup>2</sup>

But, since after a first mortgage the legal right to the ship has passed to the mortgagee, if there then comes an equitable mortgagee of the freight (though the first mortgage carries with it the legal right on taking possession to the freight); and, next, an equitable or second mortgagee of the ship, without notice of the mortgage of the freight, the last two incumbrancers would take according to the time of their securities, because the last equitable mortgagee takes subject to all equities which are prior to his own. Yet, if the first mortgagee of the ship is also the subsequent mortgagee of the freight without notice of any

<sup>1</sup> *Dickinson v. Kitchen*, 8 E. & B. 789.

<sup>2</sup> *Keith v. Burrows*, L. R. 1 C. P. D. 722; 45 L. J. C. P. D. 876; L. R. 2 C. P. D. 163; 46 L. J. C. P. D. 452; L. R. 2 App. Cas. 636; 46 L. J. C. P. D. (H. L.) 801. The judgment of the House of Lords in this case does not appear to conflict with the dicta of the Court below on the priority of mortgages, and turned solely upon whether a certain sum could be considered as freight: see, too, *Wilson v. Wilson*, L. R. 14 Eq. 32; 41 L. J. Ch. 423.



intervening charge, his claim to the freight is a prior right to that of the second mortgagee of the ship.<sup>1</sup>

The Court will use equitable remedies.

A mortgage of a British ship must be in the form prescribed by the Merchant Shipping Act, 1854. An unfinished ship, incapable of registration, can be equitably mortgaged by the deposit of the builder's certificate.<sup>2</sup> The Court will act on equitable principles in adjudicating upon cases of mortgage; thus, it will look behind the register, so as to discover the real character of the transaction, so that what is on the face of it an absolute transfer may be treated, if such was the intention of the parties, as a mortgage.<sup>3</sup>

And on the same principle equities will be enforced between the parties to a mortgage, all transactions which have taken place, as well as the registered documents, being fully considered,<sup>4</sup> and equally also the Court will correct mistakes,<sup>5</sup> as, when a receipt for the mortgage money was indorsed on the mortgage by mistake, and the mortgagees had sold the ship, the Court made a decree that the purchaser was entitled to the possession of the ship.

A mortgagee, having no maritime lien on a ship, ranks after all claimants against her except those who have supplied necessaries to British ships, since a mortgage is a valid charge on a vessel from the day when it is given, whilst the ship is not chargeable with a debt for necessaries until the suit is actually instituted.<sup>6</sup>

<sup>1</sup> *The Liverpool Marine Credit Co. v. Wilson*, L. R. 7 Ch. 507 ; 41 L. J. Ch. 798.

<sup>2</sup> *Ex parte Winter*, L. R. 20 Eq. 746 ; 44 L. J. Bank. 107.

<sup>3</sup> *The Innisfallen*, L. R. 1 Ad. 72 ; 35 L. J. Ad. 110.

<sup>4</sup> *The Cathcart*, L. R. 1 Ad. 314 ; M. S. A. 1862, s. 6.

<sup>5</sup> *The Rose*, L. R. 4 Ad. 6 ; 42 L. J. Ad. 11 ; and see also *J. A.* 1873, s. 25, sub-s. 11.

<sup>6</sup> *The Two Ellens*, L. R. 4 P. C. 161 ; 41 L. J. Ad. 33.

## CHAPTER VIII.

### BOTTOMRY AND RESPONDENTIA.

BOTTOMRY is a contract in the nature of a mortgage by which money is borrowed to be applied to the necessities of a ship. The keel or bottom of the ship (a part signifying the whole) and the freight which it will earn and the cargo on board is the security thereby given for the repayment of the sum lent, together with interest. Both principal and interest are forfeited if the ship is lost on the voyage. But no property passes as by mortgage, and no possession is given as by a pledge.<sup>1</sup> The contract of bottomry.

Respondentia is a similar contract. The security here is only the cargo laden on board,<sup>2</sup> and the money is raised for the necessities of the cargo only. Of respondentia.

Over questions relating to bottomry and respondentia bonds, the Admiralty Division has almost sole jurisdiction,<sup>3</sup> but the power of the Court to enforce a bottomry bond (under which term we include a respondentia bond) depends of course on its validity. The elements of such validity are not numerous. But, firstly, the contract must The form of the contract.

<sup>1</sup> *Stainbank v. Shepherd*, 13 C. B. 418 (441).

<sup>2</sup> *The Cargo ex Sultan*, Swa. 510.

<sup>3</sup> *Stainbank v. Shepherd*, 13 C. B. 418 (444); *Johnson v. Shippen*, 1 Salk. 34; *The Cargo ex Sultan*, Swa. 510; 5 Jur. N. S. 1060. The Court of Chancery used sometimes to give relief on bottomry bonds, but it is becoming less and less frequent to invoke the aid of that Division; and as under the Judicature Act, 1873, s. 24, equitable remedies are to be administered in every Division, the Admiralty should be as efficient a tribunal as the Chancery Division.

be in writing,<sup>1</sup> and the original bond on which the action is founded must be brought into Court.<sup>2</sup> In form it is generally a bond, but it may be in any shape so long as its essential particulars are set forth.<sup>3</sup>

These are, the parties to the contract ; the amount of the loan ;<sup>4</sup> the premium or interest agreed upon ; the name of the ship ; the voyage during which the risk is to be incurred ; the fact that the repayment of the loan depends on the safe arrival of the ship at her destination ; and that the vessel, her apparel, and furniture are hypothecated for the loan.

The voyage,<sup>5</sup> and the fact that the lenders are incurring maritime risk, must appear on the face of the contract in order to make it valid.<sup>6</sup> The remaining elements must also appear, since they can only be proved by the document itself. The instrument will receive as liberal a construction as possible from the Court.<sup>7</sup> But a bond may be good as to one part and bad as to another ; the bad, so long as it is not material to the existence of the contract, does not invalidate the good part,<sup>8</sup> and the Court will enforce those portions which it can uphold,<sup>9</sup> if the advances touched by them are not of too trivial a character.<sup>10</sup>

If necessary the claim can be referred to the Registrar and Merchants, who will examine the items in respect of which

<sup>1</sup> *Ex parte Halkett*, 19 Vesey, 474 ; *The Mary Ann*, L. R. 1 Ad. 13.

<sup>2</sup> *The Rowena*, 37 L. T. N. S. 366 ; 3 Mar. L. C. N. S. 506.

<sup>3</sup> *The Kynnersley Castle*, 3 Hagg. 1 ; *The Mary Ann*, L. R. 1 Ad. 13.

<sup>4</sup> It is advisable, but not necessary, to state reasons for such a loan ; for necessity is the foundation of such a bond, though not of the essence of the contract.

<sup>5</sup> *Western v. Wildy, Skinner*, 152 ; *Williams v. Steadman*, Holt, 126 ; *The Jane*, 1 Dods. 461.

<sup>6</sup> But it is sufficient if this fact can be collected from the document as a whole : *The Nelson*, 1 Hagg. 169 ; *The Emancipation*, 1 W. Rob. 124 ; *The Royal Arch*, Swa. 281.

<sup>7</sup> *The Kynnersley Castle*, 3 Hagg. 1 ; *The Vibilia*, 1 W. Rob. 5 ; *The Karnak*, L. R. 2 Ad. 289 ; 18 L. T. N. S. 661.

<sup>8</sup> *The Augusta*, 1 Dods. 283 ; *The Staffordshire*, L. R. 4 P. C. 194 (209) ; 41 L. J. Ad. 49.

<sup>9</sup> *The Edmond*, Lush. 57 & 211 ; 27 L. J. Ad. 76.

<sup>10</sup> *The Empire of Peace*, 39 L. J. Ad. 12 ; 21 L. T. 763.

the bond was given, and such of these as are not properly matters in respect of which a bond should be given by a master will be deducted, and the amount of the bond will then be pronounced for less such deductions,<sup>1</sup> or if all the charges are improper the Court will hold it invalid.<sup>2</sup> Further, it should be borne in mind that, even when a bond is pronounced for, this does not generally determine the actual amount of money to which the bondholder is entitled; it is merely a declaration that the bond itself is valid.<sup>3</sup> And it is, therefore, sometimes necessary, when the question of necessity depends on the amount of items of accounts said to be due by the ship in the place where the hypothecation took place, to order a reference before deciding upon the validity of the bond.<sup>4</sup>

Next, as regards the subject of the loan.

Both the ship and freight may be bottomried, but the freight must be that to be earned in the particular voyage during which the maritime risks are to be incurred, not that which may accrue from a subsequent voyage,<sup>5</sup> and an hypothecation of freight will include that received from sub-shippers of goods by the actual charterers.<sup>6</sup> The cargo may be hypothecated, but only for its own benefit;<sup>7</sup> yet since the master does not become the agent of the owners of the cargo until it is placed on board, this must be done before it can be hypothecated.<sup>8</sup>

The master is usually the person who borrows money on bottomry, and he has a right so to borrow, as between himself and the world at large, if he is the apparent master,

<sup>1</sup> *The Edmond*, Lush. 57 & 211; and see *The Cargo ex Sultan*, Swa. 510, where part only of the cargo was exposed to risk, and where the owners had to pay only such a proportion of the bond as the part of the cargo exposed bore to the whole cargo.

<sup>2</sup> *The Roderick Dhu*, Swa. 177.

<sup>3</sup> *The Catherine*, 3 W. Rob. 3.

<sup>4</sup> *The Roderick Dhu*, Swa. 177.

<sup>5</sup> *The Staffordshire*, L. R. 4 P. C. 194; 41 L. J. Ad. 49.

<sup>6</sup> *The Eliza*, 3 Hagg. 87.

<sup>7</sup> *The Gratitudine*, 3 C. Rob. 240.

<sup>8</sup> *The Jonathan Goodhue*, Swa. 355; *The Glenmanna*, Lush. 115.

though he may not have this right as between himself and the owner of the ship.<sup>1</sup> The owner of a British vessel may give a bottomry bond if both he and his vessel are at a foreign port, but not if they are at a port in this country.<sup>2</sup>

Lenders.

Any person may lend money on bottomry; but a ship's agent, occupying as he does an exceptional relation to the ship, must, in order to lend with validity, give notice to the master that he cannot reasonably allow the owners credit beyond a certain limit, and will only supply more money on the security of a bond.<sup>3</sup> But the consignees of a cargo may lend money on a bond on the ship, if it were reasonable under the circumstances that they should secure themselves for advances.<sup>4</sup> A creditor cannot take a bond for his own subsisting debt, though he may for money which he has advanced to pay other parties, so as to relieve the pressing necessities of the ship.<sup>5</sup>

The locality where the bond is given does not affect the validity of the contract, if otherwise good;<sup>6</sup> thus, when the master of a Scotch vessel gave a bond at Plymouth, the owner having died insolvent, and there being no other means of obtaining funds for the needs of his ship, it was held to be a lawful transaction.

Necessity  
the founda-  
tion of  
bottomry.

The necessity for hypothecation is the foundation of the bond,<sup>7</sup> that is, money must be required solely and indispensably for the wants of the ship or of the cargo, in order that the particular voyage on which the vessel is bound may be continued.<sup>8</sup> Necessity in relation to bottomry has received this judicial definition: "A combination of events

<sup>1</sup> *The Jane*, 1 Dods. 461; *The Orelia*, 3 Hagg. 75; *The Mary Ann*, L. R. 1 Ad. 13.

<sup>2</sup> *The Duke of Bedford*, 2 Hagg. 294; *The Helgoland*, Swa. 491; 5 Jur. N. S. 1179.

<sup>3</sup> *The Hero*, 2 Dods. 143; *The Staffordshire*, L. R. 4 P. C. 194; 41 L. J. Ad. 49.

<sup>4</sup> *The Alexander*, 1 Dods. 278.

<sup>5</sup> *The Ida*, L. R. 3 Ad. 542; 41 L. J. Ad. 85.

<sup>6</sup> *The Trident*, 1 W. Rob. 29.

<sup>7</sup> *The Nelson*, 1 Hagg. 169.

<sup>8</sup> *The Osmanli*, 3 W. Rob. 198; 14 Jur. 93.

which would prevent the completion of the voyage with profit unless money should be raised by bottomry."<sup>1</sup> This principle may be explained by Dr. Lushington's dictum, which is of a more concrete character: "All the charges in respect of the ship or crew from the time she entered port, including the unloading of the cargo, being necessary charges to enable the ship to proceed on her voyage, and being charges for which the owner or master were liable, are expenses to defray which a bottomry bond may be given."<sup>2</sup> If the ship could have continued her voyage without such a loan, the bond is void.

Bearing this rule in mind, the existence of this necessity must depend on the facts of each particular case, as proved by ordinary evidence.<sup>3</sup> The following instances will exemplify the rule: A bond was held invalid in respect of sums due to a creditor who had previously furnished necessaries on personal credit;<sup>4</sup> in respect of exorbitant commission charged by the ship's agent,<sup>5</sup> for charges relating to outward cargo unless the ship was liable to arrest for them;<sup>6</sup> and for insurance.<sup>7</sup> On the other hand, bonds have been pronounced for when given to obtain the release or to prevent the arrest of a ship in a foreign port;<sup>8</sup> when executed after advances have been made, if in pursuance of an agreement for bottomry, or in contemplation of such a security,<sup>9</sup> and for the fees of a consul abroad.<sup>10</sup>

It should be further noted that whilst it may be lawful

<sup>1</sup> *The Karnak*, L. R. 2 P. C. 505; 38 L. J. Ad. 57.

<sup>2</sup> *The Edmond*, Lush. 211 (220).

<sup>3</sup> *The Karnak*, *sup.*

<sup>4</sup> *The Augusta*, 1 Dods. 283; *The North Star*, Lush. 45; 29 L. J. Ad. 73; *The Karnak*, L. R. 2 Ad. 289.

<sup>5</sup> *The Roderick Dhu*, Swa. 177.

<sup>6</sup> *The Edmond*, Lush. 57 and 211; 27 L. J. Ad. 76.

<sup>7</sup> *The Serafina*, Br. & L. 277.

<sup>8</sup> *The Prince George*, 4 Moo. P. C. 21; *The Laurel*, Br. & L. 191; 33 L. J. Ad. 17.

<sup>9</sup> *The Karnak*, L. R. 2 Ad. 289; 18 L. T. N. S. 661.

<sup>10</sup> *The Zodiac*, 1 Hagg. 320.

to give a bond to enable a ship to proceed on a new voyage, if she is at a foreign port, and must otherwise be idle, yet a bond for a new voyage from a home port would clearly be invalid.<sup>1</sup>

Impossi-  
bility of  
obtaining  
funds.

Assuming that the money is required for the necessities of the ship, the second element of necessity is the impossibility of obtaining funds in any other manner than by the hypothecation of the ship, freight, or cargo. It is a pure question of fact, whether money could have been procured by any other means, for if personal security is available the bond is invalid.<sup>2</sup> But small sums lent contrary to this and the preceding rule will not be excluded, for it is not in the interest of commerce to be too careful of insignificant details.<sup>3</sup>

Communi-  
cation with  
owners.

The consent of the owners raises a legal but rebuttable presumption of necessity.<sup>4</sup> Consequently, communication with them by the master before hypothecation, where it is possible, is absolutely required in order to establish the validity of a bond;<sup>5</sup> and a separate communication with the owners of the cargo, where reasonable, is also absolutely necessary.<sup>6</sup>

Both in communications with the owner of the ship or with the owner of the cargo, the fact that the ship or cargo must be hypothecated, or the intention of the master to raise money by this means, should be actually stated, not necessarily in so many words, but with such clearness that the fact or intention is plainly apparent to the owners.

<sup>1</sup> *The Royal Arch*, Swa. 269 (276).

<sup>2</sup> *The Hero*, 2 Dods. 139; *The Empire of Peace*, 39 L. J. Ad. 12; 21 L. T. N. S. 763.

<sup>3</sup> *The Trident*, 1 W. Rob. 29.

<sup>4</sup> *The Royal Arch*, Swa. 269.

<sup>5</sup> *The Hamburg*, Br. & L. 253; *The Gratitude*, 3 C. Rob. 240; *The Lizzie*, L. R. 2 Ad. 254; 19 L. T. N. S. 71; *The Panama*, L. R. 2 P. C. 199; 39 L. J. Ad. 37; *The Onward*, L. R. 4 Ad. 38; 42 L. J. Ad. 61.

<sup>6</sup> *The Lizzie*, L. R. 2 Ad. 254; 19 L. T. N. S. 71; *The Karnak*, L. R. 2 Ad. 289; 37 L. J. Ad. 41; *The Hamburg*, 2 Moo. P. C. N. S. 289; Br. & L. 253.

Thus, the mere statement of serious injuries to a ship, which render considerable and expensive repairs necessary, is not a sufficient intimation that money must be raised by a bottomry bond, so as to make one given after such a communication valid.<sup>1</sup>

The absence of such reasonable inquiries by the lender as are within his power will invalidate the bond.<sup>2</sup> Such inquiries must be as to the need of money for the ship, the impossibility of obtaining it save by bottomry, and communications by the master to the owners.<sup>3</sup> The repayment of the loan must be contingent on the safe arrival of the ship,<sup>4</sup> otherwise it is not a contract of bottomry, and the Admiralty Division has no power to enforce it. The loan is repayable in the case of a constructive total loss,<sup>5</sup> as where the ship has been sold at an intermediate port<sup>6</sup> or lost after deviation, and is only gone when there is an absolute and actual total loss of the ship or cargo at sea<sup>7</sup> or by capture of an enemy.<sup>8</sup>

It is usual for the borrower to pay interest on the sum lent; this is at a rate higher than is usual in the case of ordinary loans, in consequence of the maritime risk which the lender incurs. When a dispute arises as to the validity of the bond, the absence or presence, the small or large amount of interest, are circumstances which are always considered important evidence. Thus, a low premium raises a strong presumption against the validity of the bond.<sup>9</sup> If the interest is exorbitant, the Court will

<sup>1</sup> *The Onward*, L. R. 4 Ad. 38; 42 L. J. Ad. 61; *Kleinwort v. Cassa Maritima of Genoa*, L. R. 2 App. Cas. 156; 36 L. T. 118.

<sup>2</sup> *The Nelson*, 1 Hagg. 169 (176); *The Prince of Saxe Coburg*, 3 Hagg. 287; *The Faithful*, 31 L. J. Ad. 81.

<sup>3</sup> *The Hamburg*, 32 L. J. Ad. 161; Br. & L. 253.

<sup>4</sup> *The Atlas*, 2 Hagg. 49.

<sup>5</sup> *Broomfield v. The Southern Insurance Co.* L. R. 5 Ex. 192; 39 L. J. Ex. 186.

<sup>6</sup> *Western v. Wildy, Skinner*, 152.

<sup>7</sup> *The Great Pacific*, L. R. 2 P. C. 516; 30 L. J. Ad. 45.

<sup>8</sup> *Joyce v. Williamson*, 3 Doug. 164.

<sup>9</sup> *The Emancipation*, 1 W. Rob. 124; *The Royal Arch*, Swa. 269 (286).



reduce it to a proper rate.<sup>1</sup> The fact that no premium is agreed upon will not necessarily invalidate the bond, if otherwise good; but the Court will, if it pronounce for the bond, refer, if necessary, the question of the amount of interest to be paid to the registrar.<sup>2</sup> The rate usually sanctioned from the time at which the bond becomes due until it is paid is four per cent.<sup>3</sup> In some instances attempts have been made to enforce payment of extra interest, or of a premium in respect of any time which thus elapses. The Court has, however, never allowed more than four per cent. to be charged against the cargo-owners, and if the shipowners were to refuse to pay a higher rate their contention would no doubt be upheld, as the master has not authority to bind them to pay unusually high interest after the maritime risk has ceased.<sup>4</sup>

Bond as collateral security.

A bond may be given as a collateral security if all the circumstances required to establish its validity are present.<sup>5</sup> The usual practice in such cases is for the bond not to be put into effect if the bill of exchange is duly paid. Even in such instances the bond is really the primary security, for without it the bill would not in all probability be given. The sum lent may be insured by the lender.<sup>6</sup> Delay in enforcing a bond postpones it to the claims of those who have pursued their rights with diligence, and will, if very gross, altogether avoid the bond.<sup>7</sup> On the other hand, there should not be an undue haste in enforcing it; thus, when a bond was payable seven days after the arrival of the ship, and the bondholder instituted a suit before that

Delay.

<sup>1</sup> *The Huntley*, Lush. 24 (reduced from 40 per cent.); *The Heart of Oak*, 1 W. Rob. 205 (215).

<sup>2</sup> *The Change*, Swa. 240.

<sup>3</sup> *The Cecile*, L. R. 4 P. D. 210; 40 L. T. 200.

<sup>4</sup> *The Sophia Cook*, L. R. 4 P. D. 30; 49 L. J. Ad. 16.

<sup>5</sup> *The Staffordshire*, L. R. 4 P. C. 194; 41 L. J. Ad. 49; *The Onward*, 42 L. J. Ad. 61; 28 L. T. N. S. 204.

<sup>6</sup> *The Indomitable*, Swa. 446. It is doubtful if an agreement by which the borrower insures for the lender does not vitiate the contract, as the risk is not then incurred.

<sup>7</sup> *The Indomitable*, Swa. 446.

time had elapsed, the shipowner, on paying the amount of the bond with interest into Court, obtained the condemnation of the bondholder in the costs of the proceedings.<sup>1</sup> But an agreement whereby payment is postponed, though it may be legally valid, cannot be enforced by the Admiralty Division, in pursuance of its peculiar jurisdiction.<sup>2</sup>

Whilst the Admiralty Division recognises the negotiability of bottomry bonds, it aids their transfer with reluctance.<sup>3</sup> It has enforced an agreement for a bond.<sup>4</sup> Again, when freight was hypothecated for a certain sum, and the vessel earning it was lost by a collision with another ship, and a sum in respect of such freight, less the cost of completing the voyage, was recovered as part of the damages from the other ship, the Court ordered the owners to repay to the lenders the proportion of the loan which the amount recovered bore to the whole freight. The ground of this decision, though not stated in the judgment, apparently is that the freight having in fact been received, the loan should in equity be repaid, the subject-matter of it not being in fact lost.<sup>5</sup>

It is an essential element of a bottomry bond that it *Lien* confers a maritime lien on its subject for the amount lent and for the interest agreed on.

The law by which the contract of hypothecation is to be governed has been held to be the general maritime law.<sup>6</sup> Governed by maritime law. Thus a communication with the owners previous to the making of a bond was expressly decided to be necessary

<sup>1</sup> *The Eudora*, L. R. 4 P. D. 208; 48 L. J. Ad. D. 36.

<sup>2</sup> *The Royal Arch*, Swa. 269 (282). There seems to be no reason why delay, so long as no one's rights are prejudiced thereby, should invalidate the rights of the lender. See *The Helgoland*, Swa. 491 (499); *The Rebecca*, 5 C. Rob. 102.

<sup>3</sup> *The Rebecca*, 5 C. Rob. 102.

<sup>4</sup> *The Aline*, 1 W. Rob. 111 (120).

<sup>5</sup> *The Empusa*, L. R. 5 P. D. 6; 48 L. J. Ad. D. 36.

<sup>6</sup> *The Bonaparte*, 8 Moo. P. C. 459; *The Hamburg*, 2 Moo. P. C. N. S. 290; Br. & L. 253; *The Onward*, L. R. 4 Ad. 38; 42 L. J. Ad. 61.

on this ground. The case of *Lloyd v. Guibert*<sup>1</sup> no doubt contains expressions adverse to the decision of questions by such a maritime law, and even to its existence, and tends to show that a bottomry bond should be governed by the law of the flag. As this decision was not, however, upon a bottomry bond, but upon a contract of affreightment, and as the previous case of *The Hamburg* has been recently directly approved in the Admiralty Division, the decision of the Privy Council must be considered as laying down the existing rule.<sup>2</sup>

<sup>1</sup> *Lloyd v. Guibert*, L. R. 1 Q. B. 115; 33 L. J. Q. B. 241.

<sup>2</sup> *The Gastano e Maria* (Nov. 1881), 45 L. T. N. S. 510.

## CHAPTER IX.

### SECTION I.

#### *Forfeiture of Ships.*

A SHIP is forfeited to the Crown if (a) anyone uses the British flag, or assumes the national character on board any ship owned wholly or in part by anyone not legally entitled to own a British ship; or (b) if the owner or master does any act or permits papers to be carried with intent to conceal the British character of the ship; or (c) if any unqualified person obtains a legal or beneficial interest in a British ship; or (d) if any person makes a false declaration touching his qualification for the ownership of British ships;<sup>1</sup> or if the master or owner of a ship uses or attempts to use a certificate of registry not legally granted in respect of it.<sup>2</sup> To carry out these rules, any commissioned officer on full pay, or any British officer of customs, or any British consular officer, may seize such ship, and then proceed by an ordinary action in the Admiralty Division to obtain a declaration that the ship shall be forfeited to the Crown. The right of the Crown to have a ship forfeited arises at the instant when the wrongful act is done, and like a maritime lien clings to the ship, so that it overrides the

<sup>1</sup> M. S. A. 1854, s. 103; *The Sceptre*, 35 L. T. N. S. 429.

<sup>2</sup> M. S. A. 1854, s. 52.

right of a subsequent *bond fide* purchaser without notice of the fraud.<sup>1</sup>

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## SECTION II.

### *Removal of Master.*

Removal  
of master.

The Court has power to remove the master of a British ship on the application of an owner, part owner, consignee, agent of the owner, certificated mate, or one-third of the crew, when it is proved by oath that such removal is necessary.<sup>2</sup> The amount of necessity to cause this power to be exercised is a matter wholly for the discretion of the judge;<sup>3</sup> for example, a master was removed for fraudulent breach of trust. A new master may be appointed by the Court in place of one who has been removed, with the consent of the owner, agent of the owner, or consignee of the ship, if within the jurisdiction of the Court. If they are without the jurisdiction, then the judge may appoint the new master on his sole responsibility. The Court has also jurisdiction,—if the applicant shows a valid registered title to the vessel,—to order the former

<sup>1</sup> *Wilkins v. Despard*, 5 T. R. 112; *The Annadale*, L. R. 2 Ad. D. 179; 36 L. T. N. S. 259; 46 L. J. Ad. D. 68. Affirmed on appeal, L. R. 2 Ad. D. 218; 37 L. T. N. S. 139; 47 L. J. Ad. D. 3.

<sup>2</sup> M. S. A. 1854, s. 240. Any Court having Admiralty jurisdiction in any of her Majesty's dominions may, upon application by the owner of any ship being within the jurisdiction of such Court, or by the part owner or consignee, or by the agent of the owner, or by any certificated mate, or by one-third or more of the crew of such ship, and upon proof on oath to the satisfaction of such Court that the removal of the master of such ship is necessary, remove him accordingly; and may also, with the consent of the owner or his agent, or the consignee of the ship, or if there is no owner or agent of the owner or consignee of the ship within the jurisdiction of the Court, then without such consent, appoint a new master in his stead; and may also make such order, and may require such security in respect of costs, in the matter, as it thinks fit.

<sup>3</sup> *The Frances*, 2 Dods. 420; *The Royalist*, Br. & L. 46.

master to deliver up the certificate of registry and the ship's papers.<sup>1</sup>

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### SECTION III.

#### *Actions for Injuries inflicted by Persons on the High Seas.*

The Admiralty Division possesses in virtue of its ancient maritime jurisdiction power to entertain actions *in personam* for injuries inflicted by one person to another on the high seas. It is a jurisdiction which, though it exists, is not at the present day employed, but which nevertheless cannot be considered as obsolete.<sup>2</sup>

<sup>1</sup> *The St. Olafs*, L. R. 2 Ad. D. 113; 35 L. T. N. S. 429.

<sup>2</sup> *The Ruckers*, 4 C. Rob. 73.

## CHAPTER X.

### THE ORDER OF CLAIMS.

General  
rule.

IT is a primary principle of Admiralty Law that liens *ex contractu* rank against the *res* in the inverse order of their attachment, on the ground that the last act in respect of which the latest claim arises being a service to those who have anterior claims is entitled to rank before such claims.<sup>1</sup> Wages, however, usually rank before every other claim *ex contractu*, such as may arise from bottomry bonds, mortgages of the ship, or the supply of necessaries;<sup>2</sup> and, as will be pointed out later, there are also some other exceptions to this principle, the question when difficulties arise being governed by the *lex fori*.<sup>3</sup> As regards claims for damage and salvage, and claims *ex contractu*, both rank before the latter species of claim,<sup>4</sup> and as regards life salvage and salvage of property, claims in respect of the former service take precedence of the latter kind.<sup>5</sup>

It has never been judicially decided whether a salvage claim which is created subsequent to the date when a claim for damages arises takes precedence of this claim.

<sup>1</sup> *The Cargo ex Galam*, Br. & L. 167; *The William F. Safford*, Lush. 69.

<sup>2</sup> *The Union*, Lush. 128.

<sup>3</sup> *The Union*, Lush. 128.

<sup>4</sup> *The Linda Flor*, Swa. 309; *The Benures*, 7 No. of Cas. L. (damage); *The Gustaf*, Lush. 506; 31 L. J. Ad. 207; *The Selina*, 2 No. of Cas. 15 (salvage).

<sup>5</sup> M. S. A. 1854, s. 459; *The Coromandel*, Swa. 205.

But on principle the salvors should take precedence, because they have preserved the property on which the damage lien exists, and without their services the lien of those whose ship has been injured might never be even partially satisfied. For somewhat similar reasons it has been decided that the holder of a bottomry bond given in respect of monies advanced to repair a vessel on which a damage lien already exists, has a right against the accretions in value of the ship caused by the repairs on which the sum advanced has been laid out, and that the right of the claimant in respect of the damages caused by such ship extended only to repairs done by the owner at his own expense.<sup>1</sup>

As regards claims by holders of bottomry bonds, where <sup>Bottomry</sup> there are two or more bonds, they rank according to the main rule, the last having precedence, and so on, to the first in the order of time,<sup>2</sup> unless the holders of bonds of different dates have acted in concert and privity as though they were the lenders of one sum, when their claims will be paid *pro rata*.<sup>3</sup> If a bond is given upon ship, freight, and cargo, the proceeds of the ship and freight must be exhausted before the cargo can be touched;<sup>4</sup> and on the same principle, if of two or more bonds the latest is on ship, freight, and cargo, and the others on ship and freight, the last must be paid out of the ship and freight, even though by so doing the other bonds will not be satisfied.<sup>5</sup>

When the cargo alone is hypothecated, the ship and freight will, though not mentioned in the bond, become liable before the cargo can be touched,<sup>6</sup> because the former are the primary resources to pay a bottomry bond, and

<sup>1</sup> *The Aline*, 1 W. Rob. 111.

<sup>2</sup> *The Eliza*, 3 Hagg. 87.

<sup>3</sup> *The Exeter*, 1 C. Rob. 173.

<sup>4</sup> *The Bonaparte*, 3 W. Rob. 292.

<sup>5</sup> *The Priscilla*, Lush. 1; 1 L. T. N. S. 272.

<sup>6</sup> *The Gratitude*, 3 C. Rob. 240 (264).



when a bond on the cargo alone was intermediate between two on the ship only, the holder of this instrument was held to have the first claim against the freight and cargo, contrary to the usual principle as to time, for the lenders on the security of the ship might have specifically mentioned the freight and cargo so as to give them a claim against these as well as the vessel.<sup>1</sup> When the ship and freight belong to different persons they will usually bear a rateable proportion of the payment of the bond.<sup>2</sup>

When a bondholder and a master make claims against a ship and freight and cargo, the claim of the master, if bound personally by the bond, will be postponed to that of the bondholder, unless the latter can be postponed without prejudice to his rights, as by allowing his claim to be satisfied from the cargo.<sup>3</sup> But if the master has not so bound himself then his rights are superior to those of the bondholder.<sup>4</sup>

Neces-  
saries.

Again, though wages earned before and after the giving of a bottomry bond take precedence of it,<sup>5</sup> yet this rule has been held not to extend to a case where the bond was given on a voyage subsequent to that on which the wages were earned.<sup>6</sup> It may be, however, that a reason for this practice will be found in the fact that there has been an absence of due diligence in enforcing the claim for wages. And claims for general average against a cargo upon which the master has a possessory lien rank before bottomry bonds.<sup>7</sup> As regards necessaries, those who have supplied foreign ships with necessaries have a lien for their claim,<sup>8</sup>

<sup>1</sup> *The Constancia*, 4 No. of Ca. 285.

<sup>2</sup> *The Dowthorpe*, 3 W. Rob. 73 (81).

<sup>3</sup> *The Edward Oliver*, L. R. 1 Ad. 379; 36 L. J. Ad. 13; *The Daring*, L. R. 2 Ad. 260; 37 L. J. Ad. 29; *The Eugenie*, L. R. 4 Ad. 123; 29 L. T. N. S. 314.

<sup>4</sup> *The Salacia*, Lush. 545.

<sup>5</sup> *The Union*, Lush. 89; 1 Asp. M. C. N. S. 563.

<sup>6</sup> *The Hope*, 28 L. T. N. S. 287; *The Mary Ann*, 9 Jur. 94.

<sup>7</sup> *The Cargo ex Galam*, Br. & L. 167.

<sup>8</sup> *The Two Ellens*, L. R. 4 P. C. 160; 41 L. J. Ad. 33; *The Ella A. Clerk*, Br. & L. 32; 32 L. J. Ad. 11.

and rank therefore before mortgagees who have a prior claim only to those who have supplied necessaries to British ships. And though the person who supplies necessaries to foreign ships ranks only before a mortgagee, yet claimants in respect of pilotage, towage, and dock dues, or who have supplied money to defray such charges incurred for the purpose of bringing a ship into port, will rank before the holder of a previous bond.<sup>1</sup>

If a master is part-owner of a ship, his claim for wages <sup>Wages.</sup> and disbursements, contrary to the general rule, will rank after that of one who has supplied necessaries,<sup>2</sup> though still in priority to that of a mortgagee.<sup>3</sup>

It must also be pointed out that where the claims of seamen and a master conflict with each other, those of the former have priority over those of the latter.<sup>4</sup>

If a fund in Court is insufficient to pay each of several claimants, who stand on an equal footing, in full, their claims will be satisfied *pro rata*. But, if one has actually obtained a judgment before the others, their claims will be postponed until his judgment is satisfied.<sup>5</sup>

It is also the practice of the Court, in order as far as <sup>Marshal-</sup> possible to do justice to rival claimants, to marshal the <sup>ling as-sets.</sup> assets when this can be done without violating any of the primary rules as to the order of claims<sup>6</sup> which have already been mentioned.

Thus, where a master had bound the ship, freight, and cargo, and also himself, by a bottomry bond, and he ultimately brought an action against the ship for his wages, and the holder of the bond one against ship, freight, and cargo, the Court ordered the master to be paid out of the

<sup>1</sup> *The St. Lawrence*, 49 L. J. Ad. 82 : and see *The Douthorpe*, 2 W. Rob. 73.

<sup>2</sup> *The Jenny Lind*, L. R. 3 Ad. 529 ; 41 L. J. Ad. 63.

<sup>3</sup> *The Feronia*, L. R. 2 Ad. 65 ; 37 L. J. Ad. 60.

<sup>4</sup> *The Salacia*, Lush. 545.

<sup>5</sup> *The Desdemona*, Swa. 158 ; *The Saracen*, 2 W. Rob. 451.

<sup>6</sup> *The Priscilla*, Lush. 1 ; 1 L. T. N. S. 272 ; *The Mary Ann*, 9 Jur. 94.

proceeds of the ship, and left the bondholder to obtain payment from the freight and cargo. Thereby both claimants were paid, which would not have happened if the bondholder had been allowed to exercise his rights against the ship.<sup>1</sup>

<sup>1</sup> *The Eugenie*, L. R. 4 Ad. 123 ; 29 L. T. N. S. 31

## CHAPTER XI.\*

### INFERIOR COURTS OF ADMIRALTY, AND APPEALS THEREFROM.

#### SECTION I.

##### *The County Courts.*

THE Admiralty jurisdiction of the County Courts is entirely statutory. It is to be exercised either by all or only by certain specified County Courts. A limited jurisdiction in Admiralty was first conferred upon the County Courts by the Merchant Shipping Acts of 1854 and 1862, and could be exercised by *all* County Courts,<sup>1</sup> but only in the cases following :

First. In the event of an injury having been in any part of the world caused by a foreign ship to British property, it is competent for the judge of any Court of record in the United Kingdom (which includes a County Court), upon its being shown to him by any person applying summarily that such injury was probably caused by the misconduct or want of skill of the master or crew, to direct the vessel to be detained until satisfaction is made for the alleged wrong, or security is given to abide the event of a legal proceeding in respect of it. To establish the jurisdiction the offending vessel must be found in a

Jurisdiction entirely statutory.

Under the Merchant Shipping Acts. Damage.

<sup>1</sup> But now by 31 & 32 Vict. c. 71, s. 5, no County Court, except those appointed by Order in Council, is to have jurisdiction in Admiralty.

\* This Chapter was, in the first edition, chiefly the work of James Williams, Esq., Barrister-at-Law, of the Northern Circuit.

port or river of the United Kingdom or within three miles of the coast thereof.<sup>1</sup>

Salvage.

Second. The jurisdiction in salvage cases conferred by Part VIII. of the Merchant Shipping Act, 1854, upon two justices is extended to all cases in which the value of the property does not exceed £1000, and is given to a County Court judge.<sup>2</sup>

Allotment notes.

Third. The jurisdiction over allotment notes of seamen's wages, exercised in a summary manner by justices, may be exercised by a County Court.<sup>3</sup>

But the County Courts Admiralty Jurisdiction Act, 1868,<sup>4</sup> amended and extended in 1869, gave the County Courts their real Admiralty jurisdiction.<sup>5</sup> These Acts apply, however, only to certain County Courts, defined by Order in Council,<sup>6</sup> while the two Merchant Shipping Acts were, until the Act of 1868, perfectly general in their application. The effect of the latter Act is to leave the jurisdiction under the Merchant Shipping Acts untouched, as far as regards County Courts having Admiralty jurisdiction under that Act, but to confine its exercise to such Courts.

Under the County Courts Admiralty Jurisdiction Acts.

The jurisdiction of the County Courts under the recent Acts is both *in rem* and *in personam*,<sup>7</sup> but is limited<sup>8</sup> by—

<sup>1</sup> 17 & 18 Vict. c. 104, ss. 527—529. S. 527 is confined to damage to *property*, and does not extend to injuries to the *person*: *Harris v. Owners of The Franconia*, L. R. 2 C. P. D. 173; 46 L. J. C. P. 363. And as to detention, see also 31 & 32 Vict. c. 71, s. 22.

<sup>2</sup> 25 & 26 Vict. c. 63, s. 49. Under this Act the judge sits as an arbitrator. The fact of there being a sum agreed does not oust the jurisdiction of the County Court judge, if the sum seems to him not a reasonable amount: *Beadnell v. Beeson*, L. R. 3 Q. B. 439; 37 L. J. Q. B. 173. The practice under 25 & 26 Vict. c. 63, s. 49, is regulated by the County Court Rules, 1875, Ord. xl., superseding r. 276 of the old Common Law Rules. The proceedings are commenced by entering a plaint and issuing a summons thereon (S. C.). For the jurisdiction of justices in such cases, see *infra*.

<sup>3</sup> 17 & 18 Vict. c. 104, s. 169. For the jurisdiction of justices in wages, see *infra*.

<sup>4</sup> 31 & 32 Vict. c. 71.

<sup>5</sup> 32 & 33 Vict. c. 51.

<sup>6</sup> Order of Jan. 14, 1869.

<sup>7</sup> 32 & 33 Vict. c. 51, s. 3.

<sup>8</sup> If it is advisable that an action should be tried in the High Court,

1st. The amount claimed, or (in salvage claims) the value of the property saved ;

2nd. The nature of the claim ;

3rd. The place in which the cause of action arose.

By the Act of 1868 the jurisdiction of a County Court (1) *As to amount claimed.* having Admiralty jurisdiction was confined to—

(a) Any claim for salvage in which the value of the property saved does not exceed 1000*l.*, or in which the amount claimed does not exceed 300*l.*,<sup>1</sup>

(b) Any claim for towage, necessaries,<sup>2</sup> or wages,<sup>3</sup> in which the amount claimed does not exceed 150*l.* ;

(c) Any claim for damage to cargo, or damage by collision, in which the amount claimed does not exceed 300*l.* ;

(d) Any such claim as aforesaid, where the limit of amount is exceeded, but the parties agree in writing<sup>4</sup> to submit to the jurisdiction.<sup>5</sup>

The Act of 1869 extended this jurisdiction to—

(e) Any claim for damage to a ship, whether by

though within the County Court limits, as on the ground that a commission abroad is required, leave can be obtained to issue the writ in the High Court, 31 & 32 Vict. c. 71, s. 9 : *Ellis v. General Steam Navigation Co.*, 38 L. T. N. S. 570 ; *The Bengal*, 21 L. T. N. S. 727 ; 3 Asp. Mar. Ca. O. S. 316.

<sup>1</sup> A County Court can entertain a suit for distribution of salvage where the amount which the Court is asked to apportion does not exceed 300*l.*, though the value of the property saved exceeds 1000*l.* : *The Glannibanta*, L. R. 2 Ad. 45 ; 36 L. T. 27.

<sup>2</sup> In a cause of necessaries, in order to deprive a County Court of the Admiralty jurisdiction given to it, it must be shown to the Court before it pronounces judgment that the owner is domiciled in England : *Ex parte Michael*, L. R. 7 Q. B. 658 ; 41 L. J. Q. B. 349 ; 26 L. T. N. S. 871 ; *Allen v. Garbutt*, L. R. 6 C. L. 165 ; 50 L. J. C. L. 141.

<sup>3</sup> A claim for wages may include one for wrongful dismissal. *The Blessing*, L. R. 3 Ad. D. 35 ; 38 L. T. N. S. 259 ; but disbursements cannot be sued for : *The Dictator*, 38 L. T. N. S. 946 ; 4 Mar. L. C. N. S. 19.

<sup>4</sup> By r. 38 of the Rules under the County Courts Admiralty Jurisdiction Act, 1868, a consent in writing, signed by the solicitors in a suit, might, by permission of the registrar, be filed, and become an order of Court. The County Court Rules, 1875, contain no such provision.

<sup>5</sup> 31 & 32 Vict. c. 71, s. 3.

collision or otherwise, in which the amount claimed does not exceed 300*l*.<sup>1</sup>

(f) Any claim arising out of any agreement made in relation to the use or hire of any ship, or in relation to the carriage of goods in any ship,<sup>2</sup> and also over any claim in tort in respect of goods carried in any ship, in which the amount claimed does not exceed 300*l*.

The limit of jurisdiction, as in cases under the Act of 1868, may be exceeded by the agreement in writing of the parties.<sup>3</sup>

(2) As to the nature of the claim.

The interpretation of these provisions as to the nature of the claim has caused considerable difficulty, and led to a difference of opinion in the Superior Courts. The High Court and the Courts of Common Pleas and Exchequer have held that the jurisdiction of a County Court in Admiralty is not more extensive than that of the High Court, and that a County Court has no jurisdiction to entertain the case of a collision in the Thames between barges propelled by oars only;<sup>4</sup> of necessaries where the vessel belongs to an English port, and a part-owner is domiciled in England;<sup>5</sup> of breach of a charterparty;<sup>6</sup> of demurrage and freight;<sup>7</sup> or of a claim against a pilot for damage caused by a vessel under his charge.<sup>8</sup> The Privy Council, on the other hand, has held that a County Court has jurisdiction in cases of claims arising out of

<sup>1</sup> 32 & 33 Vict. c. 51, s. 4.

<sup>2</sup> This does not apply to a claim by brokers for commission declared to be due to them in the charterparty: *The Nuova Raffaëlina*, L. R. 3 Ad. 483; 41 L. J. Ad. 37.

<sup>3</sup> 32 & 33 Vict. c. 51, s. 2.

<sup>4</sup> *Everard v. Kendall*, L. R. 5 C. P. 428; 39 L. J. C. P. 234.

<sup>5</sup> *The Dowse*, L. R. 3 Ad. 135; 39 L. J. Ad. 46; *Allen v. Garbutt*, L. R. 6 C. L. 165; 50 L. J. C. L. 141.

<sup>6</sup> *Cargo ex Argos*, L. R. 3 Ad. 568; 41 L. J. Ad. 89; *Simpson v. Blues*, L. R. 7 C. P. 290; 41 L. J. C. P. 121.

<sup>7</sup> *Cargo ex Argos, supra*; *Gunnestad v. Price*, L. R. 10 Ex. 65; 44 L. J. Ex. 44.

<sup>8</sup> *The Alexandria*, L. R. 3 Ad. 574; 41 L. J. Ad. 94; *Flower v. Bradley*, 44 L. J. Ex. 1; 31 L. T. N. S. 702

charterparties, although the High Court may have no jurisdiction in such cases;<sup>1</sup> and this view of the County Courts Acts has recently been approved by the Court of Appeal.<sup>2</sup> It has been held that the Common Law Courts were not bound by the decisions of the Privy Council.<sup>3</sup> Where no possible construction of the County Courts Admiralty Jurisdiction Acts will give jurisdiction to the County Courts, as in claims founded on bottomry, they cannot exercise jurisdiction.<sup>4</sup>

As to place, an Order in Council can give any County Court Admiralty jurisdiction, and assign to it as its district for Admiralty purposes any part or parts of any one or more district or districts of County Courts. The district so constituted for that Court, with the parts of the sea (if any) adjacent to it, to a distance of three miles from the shore, is its district for Admiralty purposes;<sup>5</sup> and its jurisdiction is strictly confined within these limits,<sup>6</sup> with the exception that certain orders, &c., may be made by the County Court judge without the district of his Court.<sup>7</sup>

Although the jurisdiction of the High Court in cases within the County Courts Admiralty Jurisdiction Acts and the Merchant Shipping Acts is concurrent with that of the County Courts, the jurisdiction of the latter is protected by the provisions as to costs, for although these have been impliedly repealed by recent cases, yet the judge will require good cause to be shown why costs should be given

Concurrent jurisdiction of High Court.

<sup>1</sup> *Cargo ex Argos*, L. R. 5 P. C. 134; 42 L. J. Ad. 1.

<sup>2</sup> *The Alina*, L. R. 5 P. D. 138; L. R. 5 Ex. D. 227; 49 L. J. Ad. 40.

<sup>3</sup> *Flower v. Bradley*, 44 L. J. Ex. 1; *Merchant Shipping Co. v. Armitage*, L. R. 9 Q. B. 105; 43 L. J. Q. B. 28; *Smith v. Brown*, L. R. 6 Q. B. 729; 40 L. J. Q. B. 220; *Leask v. Scott*, L. R. 2 Q. B. D. 380.

<sup>4</sup> *The Elpis*, L. R. 4 Ad. 1; 42 L. J. Ad. 43; *Allen v. Garbutt*, L. R. 6 C. L. 165; 50 L. J. C. L. 141.

<sup>5</sup> 31 & 32 Vict. c. 71, s. 2; Order in Council of Jan. 14, 1869.

<sup>6</sup> *The John Evans*, 43 L. J. Ad. 9; 30 L. T. N. S. 308.

<sup>7</sup> 38 & 39 Vict. c. 50, s. 4.



if the case was one which could have been tried in an inferior Court.<sup>1</sup>

Com-  
mence-  
ment of  
proceed-  
ings.

Proceedings in an Admiralty cause are to be commenced :

- (1) In the County Court within the district of which the vessel or property to which the cause relates is at the commencement of the proceedings ;
- (2) If the foregoing rule is not applicable, then in the County Court in the district of which the owner of the vessel or property to which the cause relates, or his agent in England, resides ; or, if such owner or agent does not reside within any such district, then in the County Court having Admiralty jurisdiction, the district whereof is nearest to the place where such owner or agent resides ;
- (3) If the last rule is not applicable, then in such County Court having Admiralty jurisdiction as General Orders direct ;
- (4) In any case in the County Court, or one of the County Courts having Admiralty jurisdiction, to which the parties agree by memorandum to give jurisdiction.<sup>2</sup>

The cause may be heard either at the usual Courts held within the jurisdiction, or at special Courts to be held after notice of an Admiralty cause having arisen within the jurisdiction.<sup>3</sup>

Transfer  
of proceed-  
ings.

(1) Of the  
whole pro-  
ceedings.

Under certain circumstances, Admiralty cases may be transferred from a County Court to the High Court, or from one County Court to another.<sup>4</sup> This transfer may be of the whole or of a part of the proceedings. On motion by any party to an Admiralty cause pending in a County

<sup>1</sup> See *Garnett v. Bradley*, L. R. 3 App. Cas. 944; 48 L. J. Ex. D. 156, and the question discussed, *ante*, p. 15.

<sup>2</sup> 31 & 32 Vict. c. 71, s. 21.

<sup>3</sup> S. 13; County Court Rules, 1875, Ord. xxxiii. rr. 1—3.

<sup>4</sup> There is no power of ordering the trial in a County Court of an action begun in the High Court. 30 & 31 Vict. c. 142, s. 7, applies only to Common Law actions of contract.

Court,<sup>1</sup> the High Court may, if it see fit, with previous notice to the other party, transfer the cause to the High Court, and may order security for costs, or impose such other terms as to the Court may seem fit.<sup>2</sup>

In this case the transfer is entirely at the discretion of the High Court. If during the progress of an Admiralty cause in a County Court it appears to the Court that the subject-matter exceeds the limit in respect of amount of the Admiralty jurisdiction of the Court, the Court is to transfer the cause to the High Court, unless the parties agree to confer jurisdiction upon the County Court, or unless the judge of the High Court in his discretion orders the cause to be prosecuted in the County Court in which it was commenced.<sup>3</sup>

In this case transfer is not discretionary, but compulsory, subject to the exceptions just mentioned. If during the progress of an Admiralty cause in a County Court it appears to the Court that it could be more conveniently prosecuted in some other County Court, or in the High Court, the Court may transfer it thereto.<sup>4</sup> By these provisions the High Court may transfer a cause to itself from a County Court, although the cause may relate to matters over which the High Court has no original jurisdiction, as a claim in respect of demurrage.<sup>5</sup> But, if the claim is one over which the County Court has no jurisdiction (as a claim for bottomry), the High Court on transfer of the

<sup>1</sup> The transfer may be made upon intervention of any person claiming interest in the vessel, whether the interest be cognizable by the Court or not: County Court Rules, 1875, Ord. xxxiii. r. 10.

<sup>2</sup> 31 & 32 Vict. c. 71, s. 6.

<sup>3</sup> S. 7. In this section there is no express provision for the abandonment by the plaintiff of the excess of his claim, as in the County Courts Acts. It seems doubtful whether s. 34 is sufficient to render the provisions of those Acts available.

<sup>4</sup> S. 8. In cases within the jurisdiction of the Cinque Ports, causes may be transferred to the Court of Admiralty there, instead of to the High Court.

<sup>5</sup> *The Swan*, L. R. 3 Ad. 314; 40 L. J. Ad. 8. See also *ante*, p. 106.

cause cannot entertain it.<sup>1</sup> If any defence or counter-claim of the defendant involves matter beyond the jurisdiction of the County Court, the High Court may, at its discretion, order that the whole proceeding be transferred to the High Court or any division thereof.<sup>2</sup>

(2) Of part  
of the pro-  
ceedings.

The above enactments relate to the *whole* proceedings. But by the Act of 1868, part of the proceedings may be transferred. Where under process on any decree or order of a County Court in an Admiralty cause, a vessel or property would or might be sold, then, if the owner of the vessel or property desires that the sale should be conducted in the High Court instead of in the County Court, he is entitled, on security for costs being first given, and subject and according to such other provisions as General Orders direct,<sup>3</sup> to obtain an order of the County Court for transfer of the proceedings for sale. If, however, the County Court judge thinks fit, the order may be for the transfer also of the subsequent proceedings in the cause the High Court has jurisdiction over, and all powers and authorities relating to such transferred proceedings.<sup>4</sup>

Institu-  
tion, sum-  
mons, &c.

The practice as to institution, summons, appearance, arrest,<sup>5</sup> release, cross-action, notice of defence in collision, tender, payment out of Court, appraisement, records, and copies, is based upon that of the High Court, and depends upon the County Court Rules, 1875.<sup>6</sup>

Cause, how  
heard.

If the cause is not transferred, the County Court judge must proceed to hear it as ordinary civil causes are heard.<sup>7</sup>

<sup>1</sup> *The Elpis*, L. R. 4 Ad. 1 ; 42 L. J. Ad. 43.

<sup>2</sup> 36 & 37 Vict. c. 66, s. 90 ; County Court Rules, 1875, Ord. xxxiii. rr. 19, 20.

<sup>3</sup> County Court Rules, 1875, Ord. xxxiii. rr. 29—31.

<sup>4</sup> 31 & 32 Vict. c. 71, s. 23.

<sup>5</sup> This is expressly confined by 31 & 32 Vict. c. 71, s. 22, within the limits there mentioned. If a ship is under the arrest of the High Court, and a cause is instituted in the County Court, she ought to be arrested in the County Court action : *The Turliani*, 32 L. T. N. S. 841. And see *The Rio Lima*, *post*, p. 113.

<sup>6</sup> Ord. xxxiii.

<sup>7</sup> 31 & 32 Vict. c. 71, s. 10.

In any Admiralty cause of salvage, towage, or collision, <sup>Assessors</sup> the County Court judge may if he think fit, and on the request of either party must, be assisted by two nautical assessors, in the same way as the judge of the High Court is assisted by nautical assessors,<sup>1</sup> who are advisers only, for, if the judge differs from them in opinion, he must give a decision in accordance with his view.<sup>2</sup>

In any Admiralty or maritime cause he may, if he think fit, or at the request of either party, be assisted by two mercantile assessors.<sup>3</sup>

Every inferior Court having Admiralty jurisdiction has, <sup>County Court has same power of relief as High Court.</sup> as regards all causes of action within its jurisdiction, as ample powers of relief as the High Court in a similar case;<sup>4</sup> and the rules of law of the High Court receive effect in all Courts in England, so far as the matters to which such rules relate are cognisable by such Courts.<sup>5</sup>

Judgments are enforced in the same manner as in <sup>Enforcement of judgments.</sup> ordinary civil causes in a County Court, except where otherwise provided.<sup>6</sup> For the execution of any judgment or order of a County Court in an Admiralty cause the Court has power to order, and the registrar on such order to seal and issue, and any officer of any County Court to execute, process according to General Orders,<sup>7</sup> unless the owner have obtained an order for transfer.<sup>8</sup> In an action against an unknown defendant, the vessel is not to be taken in execution, but may be arrested and detained, or

<sup>1</sup> 31 & 32 Vict. c. 71, s. 10.

<sup>2</sup> *The Aid*, L. R. 6 P. D. 84; 50 L. J. Ad. D. 40.

<sup>3</sup> 32 & 33 Vict. c. 51, s. 5; County Court Rules, 1875, Ord. xxxiii., rr. 42—46. The assessors are paid according to the amount claimed, and these payments are, unless otherwise ordered, costs in the cause.

<sup>4</sup> 36 & 37 Vict. c. 66, s. 89.

<sup>5</sup> S. 91.

<sup>6</sup> 31 & 32 Vict. c. 71, s. 12; County Court Rules, 1875, Ord. xix., r. 1. The exception is illustrated by the proceedings against an unknown defendant.

<sup>7</sup> County Court Rules, 1875, Ord. xxxiii. rr. 23—28, 37

<sup>8</sup> 31 & 32 Vict. c. 71, s. 23. See above for transfer.

kept under arrest, if already arrested.<sup>1</sup> If the defendant become subsequently known and do not appear after notice, the property to which the cause relates cannot be sold in execution until notice of the judgment has been served on the owner.<sup>2</sup>

Registration  
of  
judgments.

Judgments and orders are registered with the Registrar of County Court Judgments in London, and must be duly transmitted to him by the registrar of the County Court.<sup>3</sup> The Act of 1858 provides for the remuneration of the registrar,<sup>4</sup> and defines his powers.<sup>5</sup>

Costs.

The costs allowed and Court fees charged in Admiralty causes in the County Courts depend upon the Act of 1868<sup>6</sup> and the County Court Rules, 1875.<sup>7</sup> In salvage cases, under the Merchant Shipping Acts, they depend upon a table framed in pursuance of the Merchant Shipping Act, 1862.<sup>8</sup> In default of any special direction by the judge, the costs abide the event.<sup>9</sup> In actions *in rem*, where the amount claimed does not exceed 20*l.*, the costs are allowed on the scale in actions above 20*l.*, unless the judge is of opinion that proceedings *in rem* ought not to have been taken, and otherwise orders.<sup>10</sup> The rules relating to taxation of costs contained in the rules under the Act of 1868<sup>11</sup>

Taxation  
of costs.

<sup>1</sup> 31 & 32 Vict. c. 71, s. 22 ; County Court Rules, 1875, Ord. xxxiii. r. 23.

<sup>2</sup> R. 24.

<sup>3</sup> 31 & 32 Vict. c. 71, s. 24 ; County Court Rules, 1875, Ord. xxxvii. r. 51.

<sup>4</sup> 31 & 32 Vict. c. 71, s. 17.

<sup>5</sup> Ss. 19, 20.

<sup>6</sup> 31 & 32 Vict. c. 71, s. 18.

<sup>7</sup> County Court Rules, 1875 ; Scale of Costs ; Treasury Order of Oct. 26, 1875, Sched. (B), Part IV.

<sup>8</sup> 25 & 26 Vict. c. 63, s. 69.

<sup>9</sup> 9 & 10 Vict. c. 95, s. 88, applied to the County Court in its Admiralty jurisdiction by 31 & 32 Vict. c. 71, s. 34. As to exercise of this discretion, where the defence of compulsory pilotage is set up without notice to the plaintiff, see County Court Rules, 1875, Ord. xxxiii. r. 32.

<sup>10</sup> County Court Rules, 1875, Ord. xxxvi. r. 16.

<sup>11</sup> Rr. 62—67.

have been superseded, and no others substituted by the County Court Rules, 1875.<sup>1</sup>

The forms to be used in Admiralty proceedings in the County Courts depend upon the County Court Rules, 1875.<sup>2</sup>

## SECTION II.

### *The City of London Court.*

Since the County Courts Act, 1867, the City of London Court has been practically a County Court. The rules and orders in force for the time being for regulating the practice of and costs in the County Courts, and forms and proceedings therein, are in force in the City of London Court, to the exclusion of any rules and orders in force in that Court at the time of the passing of the County Courts Acts, 1867.<sup>3</sup> The City of London Court, therefore, possesses the Admiralty jurisdiction of a County Court, and all the law relating to the Admiralty jurisdiction of the County Courts applies equally to this Court.<sup>4</sup>

The jurisdiction of the City of London Court extends to the districts of the County Court of Essex, holden at Rochford, Brentwood, and Romford; the County Court of Kent, holden at Dartford, Gravesend, Greenwich, and Woolwich; the Southwark County Court of Surrey; the Bow and Whitechapel County Courts of Middlesex; and the City of London Court.<sup>5</sup> No judge, except the judge of the City of London Court, has Admiralty jurisdiction in the City of London.<sup>6</sup>

<sup>1</sup> See the table in the County Court Rules, 1875, contrasting the old and new County Court Rules. As to unnecessary expenses, see *The Rio Lima*, L. R. 4 Ad. 167; 43 L. J. Ad. 4.

<sup>2</sup> See County Court Rules, 1875, Forms 243—261.

<sup>3</sup> 30 & 31 Vict. c. 142, s. 35.

<sup>4</sup> The Cargo *ex Argos*, *ante*, p. 106, was an appeal from the City of London Court.

<sup>5</sup> Order in Council of Jan. 14, 1869.

<sup>6</sup> 31 & 32 Vict. c. 71, s. 2.

Registration of judgments. Judgments are registered in the same manner as judgments of the County Courts.<sup>1</sup>

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### SECTION III.

#### *The Court of Passage at Liverpool.*

Limits of its jurisdiction.

This is an inferior Court,<sup>2</sup> possessing a very ancient jurisdiction over causes of action arising within the Borough of Liverpool.<sup>3</sup> Jurisdiction in Admiralty was first conferred upon it by the County Courts Admiralty Jurisdiction Act, 1868, which gives it the jurisdiction, powers, and authorities of the County Court of Lancashire, holden at Liverpool, as defined by Order in Council.<sup>4</sup> The area of its jurisdiction is not extended by the Act of 1868, nor is it in any way taken away or restricted.<sup>5</sup> The effect of the County Courts Admiralty Jurisdiction Act, 1868, and the Amendment Act, 1869, is to give jurisdiction to the Court in all cases where either the property to which the cause relates is within the jurisdiction, or where the owner of the property resides within the jurisdiction.<sup>6</sup> The law relating to the Admiralty jurisdiction of the County Courts applies, as in the case of the City of London Court, equally to this Court.<sup>7</sup>

Rules of practice.

Rules of practice were framed under the powers of the

<sup>1</sup> 31 & 32 Vict. c. 71, s. 24; County Court Rules, 1875, Ord. xxxvii. r. 51.

<sup>2</sup> *Laughton v. Taylor*, 6 M. & W. 695; 10 L. J. N. S. Ex. 57.

<sup>3</sup> Russell's Practice of the Court of Passage, p. 14.

<sup>4</sup> Order of Jan. 14, 1869. The local limits of the Admiralty jurisdiction of the Liverpool County Court, as defined by that Order, are the districts of the County Court of Cheshire, holden at Birkenhead and Runcorn, and the County Court of Lancashire, holden at Warrington, St. Helens, Liverpool, and Ormskirk.

<sup>5</sup> 31 & 32 Vict. c. 71, s. 25.

<sup>6</sup> 31 & 32 Vict. c. 71, s. 21.

<sup>7</sup> *The Dowse* and *The Alexandria*, ante, p. 106, and other decisions, were Court of Passage cases.

County Courts Admiralty Jurisdiction Act, 1868.<sup>1</sup> These rules must now be read subject to the rules framed after the Judicature Acts came into operation. By the last rules the practice of the Court of Passage is to be, *mutatis mutandis*, the same as that of the High Court.<sup>2</sup>

Costs depend upon the scale framed in pursuance of the County Courts Admiralty Jurisdiction Act, 1868.<sup>3</sup>

#### SECTION IV.

##### *Justices of the Peace.*

The Admiralty jurisdiction of justices of the peace is confined to cases of damage, salvage, and wages. Their jurisdiction.

The earliest jurisdiction was that given by the Harbours Clauses Act, 1847, by which two justices have jurisdiction to determine claims in respect of injury done by any vessel or float of timber to a harbour, dock, pier, or quay, where the amount claimed for damage does not exceed £50, and to cause the offending vessel to be distrained<sup>4</sup> and kept until the amount of damages and costs awarded by them has been paid.<sup>5</sup> Under the Harbours Clauses Act, 1847.

Disputes as to amount of salvage arising in the United Kingdom<sup>6</sup> (except within the Cinque Ports) are to be referred to the arbitration of any two justices or a stipendiary magistrate, if the sum claimed<sup>7</sup> does not exceed Salvage. Under the Merchant

<sup>1</sup> 31 & 32 Vict. c. 71, ss. 25, 35, confirmed by 32 & 33 Vict. c. 6; General Orders of Feb. 8, 1869. See Appendix.

<sup>2</sup> Rules of Dec. 22, 1876.

<sup>3</sup> General Orders of Feb. 8, 1869, Sched. I. The Rules of Dec. 22, 1876, do not contain any provision superseding or altering this scale.

<sup>4</sup> It seems that a distress cannot be levied while the ship is under arrest of the High Court: *The Westmoreland*, 4 Notes of Cases, 173 (a case of distress for wages, under 17 & 18 Vict. c. 104, ss. 188, 189).

<sup>5</sup> 10 & 11 Vict. c. 27, ss. 74, 75; *Wear Commissioners v. Adamson*, 1 Q. B. D. 546; L. R. 2 App. Cas. 743; 47 L. J. Q. B. D. 193 (H. L.).

<sup>6</sup> *The Actif*, 3 Jur. N. S. 893.

<sup>7</sup> The words "sum claimed" mean the sum claimed by the salvor



Shipping  
Act, 1854.

£200. In case of wreck they must be resident at or near the place where such wreck is found ; in case of services rendered to any ship or boat, or to the persons, cargo, or apparel belonging thereto, resident at or near the first port or place in the United Kingdom into which such ship or boat is brought after the occurrence of the accident by reason whereof the claim to salvage arises.<sup>1</sup> If the sum exceeds £200, the justices can only have jurisdiction by consent. Their jurisdiction up to £200 is protected by the proviso by which, if a sum not greater than £200 is recovered in a Superior Court, the successful party is deprived of costs, unless the Court certifies that the case is a fit one to be tried in the Superior Court.<sup>2</sup>

So exclusive is their jurisdiction up to £200, that an action cannot be brought in a Common Law Court for distribution of salvage ;<sup>3</sup> and the High Court has jurisdiction to condemn in damages and costs plaintiffs who arrest and detain a vessel in respect of which a claim might have been proceeded with before justices.<sup>4</sup> In order that the Court may not do so, the arrest must have been made under the *bond fide* belief that the High Court had jurisdiction.

before any legal proceedings are taken : *The William and John*, Br. & L. 49 ; 32 L. J. Ad. 102 ; *The Andrew Wilson*, Br. & L. 56 ; 32 L. J. Adm. 104.

<sup>1</sup> Timber moored in a river and drifted to sea in consequence of accidental loosening of the fastenings is not wreck within the meaning of ss. 458, 460 ; *Palmer v. Rouse*, 3 H. & N. 505 ; 27 L. J. Ex. 437.

<sup>2</sup> 17 & 18 Vict. c. 104, s. 460. The intention of s. 460 is that ordinary cases of salvage under £200 should not be brought before the High Court : *The Fenix*, Swa. 13 ; *The Leda*, 2 Jur. N. S. 119. See *The Actif*, 3 Jur. N. S. 893. The provisions of 17 & 18 Vict. c. 104, as to life salvage, are extended by 24 Vict. c. 10, s. 9, and 25 & 26 Vict. c. 63, s. 59.

<sup>3</sup> *Atkinson v. Woodhall*, 1 H. & C. 170 ; *sub. nom. Atkinson v. Bell*, 31 L. J. M. C. 174.

<sup>4</sup> But the Court will not do so unless the circumstances show *mala fides* or *crassa negligentia* : *The Eleonore*, Br. & L. 185 ; 33 L. J. Ad. 19 ; *The Kate*, Br. & L. 218 ; 33 L. J. Ad. 122. Both these cases arose under 25 & 26 Vict. c. 63, s. 49. See *infra* ; but the principle is the same.

The justices may decide either by themselves or with the assistance of an assessor,<sup>1</sup> or may refer the matter to a skilled umpire. Unless the time be specially extended by them, the award must be made within forty-eight hours of the reference of the dispute to them, or within forty-eight hours of the appointment of an umpire.<sup>2</sup> The costs of the arbitration, including the fees to the assessor or umpire,<sup>3</sup> are divided between the parties at the discretion of the umpire.<sup>4</sup> The justices and the umpire have full powers to call for documents and to administer oaths.<sup>5</sup>

The Merchant Shipping Amendment Act, 1862, has considerably extended the provisions of the Act of 1854. Under the Merchant Shipping Act, 1862. It enacts: (1) that the provisions of the Act of 1854 are to extend to all cases in which the value of the property saved<sup>6</sup> does not exceed £1000; (2) that the provisions are to apply whether the salvage service has been rendered within the limits of the United Kingdom or not;<sup>7</sup> (3) that a rota of justices for salvage cases may be appointed; (4) that, when no such rota is appointed, the salvors may name one justice and the owners of the property saved the other; (5) that, if neither party names a justice within a reasonable time, the case may be tried by two or more justices at petty sessions; (6) that a stipendiary magistrate, County Court judge, &c., may exercise the jurisdiction in salvage given to two justices.<sup>8</sup>

The receiver of wreck for the district may, by consent, appoint a valuer, whose valuation, duly signed and attested,

<sup>1</sup> This assessor differs in position and in the scope of his duties from the assessor allowed in cases of shipping casualties.

<sup>2</sup> 17 & 18 Vict. c. 104, s. 461.

<sup>3</sup> S. 462.

<sup>4</sup> S. 463.

<sup>5</sup> S. 464.

<sup>6</sup> This means the value of the property when first brought into a place of safety: *The Stella*, L. R. 1 Ad. 340; 36 L. J. Ad. 13.

<sup>7</sup> See *The Actif*, 3 Jur. N. S. 893, for the law under the Act of 1854.

<sup>8</sup> 25 & 26 Vict. c. 63, s. 49.

is evidence in any subsequent proceeding in respect of the property saved.<sup>1</sup>

Apportion-  
ment of  
salvage.

Salvage not exceeding £200 may be paid by the party liable to the receiver of wreck for the district,<sup>2</sup> who is to distribute it among those entitled ;<sup>3</sup> if the sum exceeds £200, the High Court apportions it.<sup>4</sup>

Enforce-  
ment of  
salvage  
award.

A sum ordered to be paid by justices or a stipendiary magistrate is leviable by distress of the ship, her tackle, furniture, and apparel.<sup>5</sup>

Wages.

A master, seaman, or apprentice, or any person duly authorized on his behalf,<sup>6</sup> can sue for wages in a summary manner before two justices or a stipendiary magistrate,<sup>7</sup> where the amount due does not exceed £50; and every order made in the matter is final.<sup>8</sup> Deductions may be made for costs rightfully incurred in procuring the conviction of the seaman for any offence,<sup>9</sup> and any question concerning forfeiture of wages may be decided in a proceeding for wages.<sup>10</sup> No proceeding for the recovery of wages under £50<sup>11</sup> is to be instituted in a Superior Court, unless either the owner of the ship is bankrupt, or the ship is under arrest, or sold by the authority of such Court, or the justices or stipendiary magistrates refer the case to such

<sup>1</sup> S. 50. The not obtaining a valuation from the receiver under this section was held not to amount to *crassa negligentia*, so as to render defendants liable to be condemned in damages and costs: *The Kate*, Br. & L. 218; 33 L. J. Ad. 122.

<sup>2</sup> 17 & 18 Vict. c. 104, s. 466.

<sup>3</sup> S. 467.

<sup>4</sup> S. 468.

<sup>5</sup> S. 523.

<sup>6</sup> These words seem to meet the difficulty caused by the last statute, 7 & 8 Vict. c. 112, upon the construction of which it was held that a justice had no jurisdiction to adjudicate upon a claim for wages by the administrator of a deceased seaman: *Hollingsworth v. Palmer*, 4 Ex. 267; 18 L. J. Ex. 409.

<sup>7</sup> 17 & 18 Vict. c. 104, s. 519.

<sup>8</sup> Ss. 188, 191.

<sup>9</sup> S. 251.

<sup>10</sup> S. 254.

<sup>11</sup> Whether this applies to a claim for wages earned on a foreign ship, *quære*: *Burns v. Chapman*, 5 C. B. N. S. 481; 28 L. J. C. P. 6.

Court, or neither owner nor master is or resides<sup>1</sup> within twenty miles of the place where the seaman or apprentice is put ashore.<sup>2</sup> Provision is made for suing upon allotment notes in the same summary manner. There is no restriction as to amount in this case.<sup>3</sup> The amount advanced for the relief, &c., of a seaman left abroad may be recovered in the same manner as wages due to the seaman.<sup>4</sup>

Orders directing payment of wages may be enforced against the owner by distress of the ship, her tackle, furniture, and apparel.<sup>5</sup>

Enforcement of payment of wages.

Proceedings under the Merchant Shipping Acts, 1854 and 1862, must be taken within six months after the cause of complaint arises, or no order for payment of money will be made; or, if both or either of the parties are out of the United Kingdom, within six months after they both arrive or are at one time within it.<sup>6</sup>

Limitation of time for claims.

In the case of allotment notes concurrent jurisdiction is expressly conferred by the words of the Merchant Shipping Act, 1854,<sup>7</sup> upon all County Courts. Under the County Court Rules, 1875,<sup>8</sup> the County Court has as full powers of taking account of counter-claim and set-off as the justices under the Merchant Shipping Act.

Concurrent jurisdiction.

The costs of summary proceedings for salvage before

Costs in

<sup>1</sup> A place of occasional business is not a residence within this section. *The Blakeney*, Swa. 428; 5 Jur. N. S. 418.

<sup>2</sup> S. 189. By this section the right of the High Court to entertain actions for wages is barred, except under the circumstances therein mentioned: *The Harriet*, Lush. 285; 5 L. T. N. S. 210.

<sup>3</sup> S. 169. The registered owner of a ship, if he has demised it and parted with all control over it, is not liable to pay arrears due under an allotment note made in favour of a seaman's wife under this section: *Meiklereid v. West*, 1 Q. B. D. 428; 45 L. J. M. C. 91.

<sup>4</sup> Ss. 213, 228.

<sup>5</sup> S. 523. A distress for seaman's wages cannot be levied while the vessel is under arrest of the High Court: *The Westmoreland*, 4 Notes of Cases, 173.

<sup>6</sup> S. 525.

<sup>7</sup> 17 & 18 Vict. c. 104, s. 472. As to advance notes, see further, 43 & 44 Vict. c. 16.

<sup>8</sup> Ord. ix.

salvage  
claims.

justices depend upon the scale framed by the Board of Trade in 1865, in pursuance of the Merchant Shipping Act, 1862.<sup>1</sup>

## SECTION V.

*The Admiralty Court of the Cinque Ports.*

The Court of the Admiral of the Cinque Ports is one of great antiquity, dating from the middle ages, when within his jurisdiction the Admiral of these ports had as large authority as the Lord High Admiral himself. At the present time the original jurisdiction of this Court within its local limits<sup>2</sup> seems to be as extensive as that of the High Court.<sup>3</sup> It is not mentioned in the recent enactments extending the jurisdiction of the High Court.<sup>4</sup> The proceedings in the Court are carried on by printed pleadings, though sometimes the case has been decided upon the facts disclosed in the affidavits of the parties.<sup>5</sup> The Merchant Shipping<sup>6</sup> and County Courts Acts<sup>7</sup> have always preserved the jurisdiction of this Court as a Court of concurrent jurisdiction with the High Court, on appeals within the Cinque Ports.

The Judge of the Court is called the Judge Official and Commissary of the Court of Admiralty of the Cinque Ports, and is usually the Judge of the Admiralty Division,

<sup>1</sup> 25 & 26 Vict. c. 63, s. 49. For the jurisdiction of justices over commorant vessels, see 17 & 18 Vict. c. 104, s. 521; and s. 521 applies to the High Court as well as to justices.

<sup>2</sup> For which see 1 & 2 Geo. IV. c. 76, s. 18. The Cinque Ports are Dover, Sandwich, Romney, Hastings, and Hythe; the two ancient towns are Winchelsea and Rye; Seaford is a member of Hastings. See further *Life of Sir L. Jenkins*, vol. i., p. 85.

<sup>3</sup> *The Lord Warden v. The King in his Office of Admiralty*, 2 Hagg. 438. As to its criminal jurisdiction, see 28 Hen. VIII. c. 15.

<sup>4</sup> 3 & 4 Vict. c. 65; 24 Vict. c. 10.

<sup>5</sup> *The Clarissa*, 12 Moo. P. C. 340; Swa. 129. See Rules of this Court, of June 26, 1875. App. III.

<sup>6</sup> 17 & 18 Vict. c. 104, s. 460; see 18 & 19 Vict. c. 48, s. 10.

<sup>7</sup> 31 & 32 Vict. c. 71, s. 33.

who appoints a Surrogate to perform the necessary judicial duties.

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## SECTION VI.

### *The Commissioners within the Cinque Ports.*

The jurisdiction of these commissioners dates from the year 1820, and was conferred upon them by statute.<sup>1</sup> The Lord Warden of the Cinque Ports can nominate three or more commissioners in each of the Cinque Ports to adjust differences relative to salvage. Where vessels are forced or cut from their cables and anchors by any accident, and leave the same in any place within the jurisdiction of the Cinque Ports, &c., the commissioners are to determine any salvage claim within twenty-four hours after it is referred to them.<sup>2</sup> They have also power to decide upon all claims made by pilots and others for any kind of service rendered to a ship within the jurisdiction, and upon all claims for the saving, within the jurisdiction, of any goods which are wrecked, stranded, or cast away from any ship; and they may decide on such claims for services rendered to shipping, whether the ships were in distress or not.<sup>3</sup> No commissioner can act except in the port in which he resides, or from which his usual place of residence is not distant more than a mile.<sup>4</sup>

The jurisdiction extends from Seaford to Faversham, taking in parts of the coast of Sussex, Kent, and Essex.<sup>5</sup>

Their jurisdiction depends on Cinque Ports Act, 1821.

Local limits of the jurisdiction.

<sup>1</sup> 1 & 2 Geo. IV. c. 76.

<sup>2</sup> 1 & 2 Geo. IV. c. 76, s. 1.

<sup>3</sup> S. 2. The owners of a ship to which salvage services had been rendered within the jurisdiction summoned a meeting of the commissioners to adjudicate upon the amount of salvage. No notice of the intended meeting was given to any of the salvors, but it was proved to be not usual to give such notice: *The Elise*, Swa. 436.

<sup>4</sup> S. 3. By 9 Geo. IV. c. 37, s. 1, the power of appointing these commissioners may also be exercised by a deputy-warden, or by the Lieutenant of Dover Castle.

<sup>5</sup> S. 18.

Jurisdiction in salvage always preserved. Concurrent jurisdiction of High Court and Admiralty Court of the Cinque Ports. No limit of amount.

The jurisdiction of the Cinque Ports in cases of salvage is especially preserved by later statutes,<sup>1</sup> though the provisions as to wreck and pilotage have been altered.<sup>2</sup>

The High Court, and the Court of Admiralty of the Cinque Ports,<sup>3</sup> have concurrent jurisdiction with the commissioners.<sup>4</sup>

No limit of amount is named in any of the Acts relating to the commissioners.

## SECTION VII.

### *The Royal Courts of Jersey and Guernsey.*

Their authority.

The authority of these Courts depends upon charters and letters patent, orders in Council, local ordinances, and Acts of the Imperial Parliament.<sup>5</sup> The Royal Court of Jersey seems to have jurisdiction by immemorial usage for six miles beyond low water mark. The jurisdiction of the Royal Court of Jersey also extends over certain small islands, dependencies of Jersey (the whole being called "the bailiwick of Jersey"), and that of the Royal Court

<sup>1</sup> 17 & 18 Vict. c. 104, s. 460; 17 & 18 Vict. c. 120, Sched.; 18 & 19 Vict. c. 48, s. 10.

<sup>2</sup> 17 & 18 Vict. c. 120, Sched.; Maude and Pollock, *Merch. Ship.*, p. 510 (Wreck); 16 & 17 Vict. c. 129; 17 & 18 Vict. c. 104, s. 370 (Pilotage).

<sup>3</sup> The full title of the judge of this Court, as stated in p. 120, is "The Judge Official and Commissary of the Court of Admiralty of the Cinque Ports," 1 & 2 Geo. IV. c. 76, s. 15.

<sup>4</sup> *The Maria Luisa*, Swa. 67; 2 Jur. N. S. 264. This concurrent jurisdiction is not affected by the Merchant Shipping Act, 1862 (25 & 26 Vict. c. 63): *The Jeune Paul*, L. R. 4 Ad. 336; 16 L. T. N. S. 125; see *The Antelope*, L. R. 4 Ad. 33; 27 L. T. N. S. 663.

<sup>5</sup> See "Remarques sur l'Approbation des Lois de Guerneze," by Le Marchant, vol. ii., pp. 227, 316; Le Quesne's "Constitutional History of Jersey;" Report of the Royal Commission on the Laws of Jersey (1861), Pritch. Adm. Dig. 307; Montesquieu, "Esprit des Loix," Book xxviii. s. 42; *Re the Bailiffs and Jurats of the Royal Court of Guernsey*, 5 Moo. P. C. 49; *Re the Jersey Jurats*, L. R. 1 P. C. 94; 3 Moo. P. C. N. S. 456; also *Le Birton v. Ennis*, 4 Moo. P. C. 323.

of Guernsey over Alderney, Sark, and two other islands ("the bailiwick of Guernsey").<sup>1</sup>

The practice in the Royal Court of Jersey is said to differ widely from that of Guernsey.<sup>2</sup> The practice in both depends, in the first instance, upon the Great Customary of Normandy. It is difficult, if not impossible, to obtain a correct view of the law and procedure of these Courts, owing to the want of reports and law books of authority in the island<sup>3</sup> and of Admiralty cases on appeal to the Privy Council. It seems, however, that the Royal Courts sit as a "Cour en Amirauté," with general commercial rather than Admiralty jurisdiction,<sup>4</sup> and as an appellate Court from the "nombre inférieur."<sup>5</sup>

These Courts must, upon application, aid and assist the High Court of Admiralty to enforce bonds given in the Vice-Admiralty Courts in case of salvage by a Queen's ship.<sup>6</sup>

Jurisdiction under Merchant Shipping Act, 1854.

## SECTION VIII.

### *The Admiralty Court of the Isle of Man.*

This Court, which is presided over by the water bailiff of the island, possesses a jurisdiction depending partly upon its jurisdiction.

<sup>1</sup> Report of Royal Commission, No. 1604—1615.

<sup>2</sup> "The Channel Islands," by Amsted and Latham, ch. xxiii.

<sup>3</sup> The only case which bears upon the Admiralty jurisdiction of the Courts is *The Nora Creina*, July, 1862 (Royal Court of Jersey), Pritch. Adm. Dig. 308, from which it appears that when a ship is arrested in an Admiralty suit in the Royal Court the ship is detained until the suit is concluded, and that it is not the practice to release the ship on bail, and the Court will not do so without the consent of all parties. See Report of Royal Commission, p. iii., for the want of reports.

<sup>4</sup> Amsted and Latham, ch. xxiii.

<sup>5</sup> Report of Royal Commission, p. liii.

<sup>6</sup> 17 & 18 Vict. c. 104, ss. 486—494. For the existence of the Admiralty jurisdiction of these Courts, see further Report of Royal Commission, No. 1000, 1033, 1950 (for Jersey); Le Marchant's "Remarques," &c., vol. ii., p. 277; "Nous n'avons point de Court d'Amirauté, autre que la Cour Royale" (for Guernsey).



*By custom.* immemorial custom, partly upon statute. The jurisdiction is both *in personam* and *in rem*, and is almost identical with that of the High Court in England. It is most frequently employed to settle accounts between the owners, masters, and seamen engaged in the herring fishery, and sometimes to award salvage, and to punish offences committed upon the herring fleet.

*By statute.* By the Merchant Shipping Act, 1854, the Court is to aid in enforcing bonds given in a Vice-Admiralty Court in the case of salvage services rendered by a Queen's ship.<sup>1</sup>

*Practice.* The proceedings are usually of a summary nature. There are no written pleadings. The plaintiff serves the defendant with a short statement of his claim, with a writ from the water bailiff, under which the defendant is bound to attend. Proceedings may also be instituted by petition. The defence of the defendant is in either case usually stated orally in Court. In certain cases trial by a jury of seafaring men is allowed; but the jury trial, though still allowed, is practically extinct in this Court.<sup>2</sup>

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## SECTION IX.

### *The Vice-Admiralty Courts.*

*In what places they are* The Vice-Admiralty Courts have Admiralty jurisdiction in the British Colonies and possessions.<sup>3</sup> In one instance,

<sup>1</sup> 17 & 18 Vict. c. 104, ss. 484—93. The same power is exercisable by the Royal Courts of the Channel Islands.

<sup>2</sup> These facts were kindly furnished by Sir James Gell, Attorney-General of the Isle of Man.

<sup>3</sup> A list of these Courts is found in the Schedule to 26 & 27 Vict. c. 24. The Straits Settlements have been added by 30 & 31 Vict. c. 45, s. 17. For the mode of constituting them, see Pritch. Adm. Dig. 1063.

For the Admiralty and Vice-Admiralty jurisdiction of the High Court of Bengal, see Broughton's Civil Procedure Code (4th ed.), pp. 377, 397, 719, and the cases there cited, for Madras, p. 358, for Bombay, p. 360.

that of the Supreme and Provincial Consular Courts of the Ottoman Empire, Vice-Admiralty jurisdiction is exercised by Courts beyond the limits of British territory.<sup>1</sup> They are not Courts of Record.<sup>2</sup> Their powers before recent legislation depended on charters from the Crown. The practice and jurisdiction differed considerably in the different Courts, according to the powers given in the charters.<sup>3</sup> The authority of the Vice-Admiralty Courts was looked upon jealously by the Common Law Courts of England, and was not recognised where a decree had been made illegal by the English law, as, where it confirmed a sale of ship or cargo by the captain where the case was not one of necessity, even though for the benefit of all concerned.<sup>4</sup> The powers of these Courts are now strictly defined by statute.

estab-  
lished.

Not Courts  
of Record.

Their  
powers  
before  
recent  
legislation.

Their  
statutory  
powers.

In case of salvage services being rendered by a Queen's ship abroad, the property alleged to be salvaged is, if the salvor is justified in detaining it, to be taken into a port where there is a consular officer or Vice-Admiralty Court. On the master's executing a bond in the form prescribed,<sup>5</sup> and, if the owners be foreigners, procuring proper security as well, the property is to be released, and the bond transmitted to the High Court for that Court to adjudicate upon. If the salvor and master agree that a Vice-Admiralty Court shall adjudicate, such Court has jurisdiction. In the latter case, the Vice-Admiralty Court has all the powers of the High Court. Unless the salvor proceeds under this Act, he has no power to detain the property.<sup>6</sup> If the salvor agrees to abandon his lien, upon

Under the  
Merchant  
Shipping  
Act, 1854.

<sup>1</sup> Under 6 & 7 Vict. c. 94, s. 1, and the Order in Council of Jan. 9, 1863.

<sup>2</sup> *Smith v. Nichols*, 7 Scott. 147; 5 Bing. N. C. 208; 7 Dowl. 282, per Tindal, C. J.

<sup>3</sup> See *The Elizabeth*, 1 Hagg. 226.

<sup>4</sup> *Reid v. Darby*, 10 East, 143; *Hunter v. Prinsep*, 10 East, 378; *Hunter v. Parker*, 7 M. & W. 322; *The Segredo*, 1 Spks. 57.

<sup>5</sup> 17 & 18 Vict. c. 104, Sched., Table W.

<sup>6</sup> 17 & 18 Vict. c. 104, ss. 486-494.

the master entering into a written agreement to abide the decision of the High Court or a Vice-Admiralty Court, and giving due security, the agreement may be adjudicated upon and enforced in the same manner as the bond above mentioned, and the agreement is to be transmitted to the High Court in the same manner as a bond. This provision applies to salvage services rendered by any ship, whether a Queen's ship or not.<sup>1</sup>

Under the  
Vice-Ad-  
miralty  
Courts  
Act, 1863.

The matters in which jurisdiction has been conferred upon these Courts by the Vice-Admiralty Courts Act, 1863, are claims :

- (1) For seamen's wages ;<sup>2</sup>
- (2) For master's wages and disbursements ;<sup>3</sup>
- (3) In respect of pilotage ;
- (4) In respect of salvage of life or goods ;
- (5) In respect of towage ;
- (6) In respect of bottomry or respondentia bonds ;
- (7) In respect of mortgage where the ship has been sold by a decree of the Vice-Admiralty Court, and the proceeds are under its control ;
- (8) Between the owners of a ship registered in the possession in which the Court is established touching ownership, possession, employment, or earnings ;
- (9) For necessaries supplied in the possession in which the Court is established, where no owner

<sup>1</sup> S. 497.

<sup>2</sup> Apart from any enabling statute, a Vice-Admiralty Court seems to have no more extended jurisdiction than the High Court over policies of assurance, charter-parties, &c. Forsyth; Cases and Opinions, p. 94. (Opinion of Sir Christopher Robinson, Q. A.)

<sup>3</sup> For wages, see also 17 & 18 Vict. c. 104, ss. 189-191. Under s. 191 the master has a lien for wages in the Vice-Admiralty Court, whatever may be the municipal law of the colony: *The Rajah of Cochin*, Swa. 472.

A suit for wages under £50 cannot be maintained in the Vice-Admiralty Court, by s. 189 of 17 & 18 Vict. c. 104; but the Act of 1863 contains no such limitation.

- or part-owner is domiciled within the possession at the time of the necessaries being supplied ;
- (10) In respect of building, equipping, or repairing (with similar restrictions as to domicile).<sup>1</sup>

They have also jurisdiction in cases of breach of the Navy regulations, and of Admiralty droits.<sup>2</sup>

Unless expressly confined by the Act, jurisdiction may be exercised where the cause or right of action has arisen beyond the limits of the jurisdiction.<sup>3</sup>

The High Court has concurrent jurisdiction with the Vice-Admiralty Courts.<sup>4</sup>

The Supreme Consular Court of Constantinople and the Provincial Consular Courts have the authority of Vice-Admiralty Courts.<sup>5</sup> The Supreme Court has jurisdiction in the Ottoman dominions, a Provincial Court only within its own district.<sup>6</sup> The jurisdiction of the Supreme Court is both *in rem* and *in personam*.<sup>7</sup>

Statutory provision is made for the appointment of judge, deputy-judge, registrar, and marshal of a Vice-Admiralty Court.<sup>8</sup>

<sup>1</sup> 26 & 27 Vict. c. 24, s. 10.

<sup>2</sup> S. 11.

<sup>3</sup> S. 12. It has also jurisdiction in revenue cases, &c. ; 26 & 27 Vict. c. 24, s. 13 ; 36 & 37 Vict. c. 85, s. 5 ; see *The Hercules*, 2 Dods. 353 ; *The Elizabeth*, 1 Hag. 228.

<sup>4</sup> 30 & 31 Vict. c. 45, s. 16 ; *The Peerless*, Lush. 30.

<sup>5</sup> 6 & 7 Vict. c. 94, s. 1. Order in Council of 12 Dec., 1873 ; State Papers, vol. 63, p. 59. For the jurisdiction before the Order in Council and the Vice-Admiralty Courts Act, 1863, see *The Laconia*, 2 Moo. P. C. N. S. 161 ; 33 L. J. Adm. 11 ; Br. & L. 117 ; *Hamilton v. Aquilina*, 2 L. T. N. S. 90 ; *The Patriotto v. The Rival*, 2 L. T. N. S. 301.

The existence of a Vice-Admiralty Court within the territorial limits of an independent State is an allowed exception to General International Law. See the judgment of Lord Stowell in *The Madonna del Burso*, 4 C. Rob. 172 (1804).

<sup>6</sup> Order of Dec. 12, 1873 ; State Papers, vol. 63, p. 59.

<sup>7</sup> *The Laconia*, *supra*.

<sup>8</sup> 26 & 27 Vict. c. 24, ss. 3—8 ; 30 & 31 Vict. c. 45, ss. 4—14.

See *Rolet v. Reg.*, L. R. 1 P. C. 198 ; 4 Moo. P. C. N. S. 41 ; for sufficiency of evidence of due appointment of a deputy-judge.

The Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), s. 23,

- Practice.** The practice is at present governed by the rules framed in pursuance of the repealed statute 2 Will. IV. c. 51.<sup>1</sup>  
The proceedings as nearly as possible should follow the practice of the High Court in England ; thus, the form of preliminary acts should be the same.<sup>2</sup>
- Security for costs.** Security for costs may be required to be given in a Vice-Admiralty Court, or in default the claim may be dismissed.<sup>3</sup>
- Taxation of costs.** If a party is dissatisfied with the taxation of costs in a Vice-Admiralty Court, it may be reviewed by the High Court.<sup>4</sup>

## SECTION X.

*Appeals to the Privy Council.*

1. The  
Judicial  
Commit-  
tee.

- To this Court an appeal lies from the decisions of
- (a) The Royal Courts of Jersey and Guernsey ;<sup>5</sup>
  - (b) The Isle of Man Court ;
  - (c) The Vice-Admiralty Courts ;

declares that the Judicature Acts, 1873 and 1875, made no difference in the power of the Admiralty to appoint judges and officers of Vice-Admiralty Courts.

<sup>1</sup> And an Order in Council of June 27, 1832 (Rules and Regulations for the Admiralty Courts abroad). 2 Will. IV. c. 51, was repealed by 26 & 27 Vict. 24, Sched. B., but the repeal does not affect the rules framed under the repealed stat. 26 & 27 Vict. c. 24, s. 24 ; they remain until altered by the powers given in s. 14 of the latter Act. Powers are given by 26 & 27 Vict. c. 24, to frame new and alter existing rules.

Proceedings against a vessel must be made under these rules, and not according to the rules of the Civil Law : *Guimaraens v. Preston*, 4 Moo. P. C. 167 ; 6 Jur. 879.

Proctors may proceed in a Vice-Admiralty Court without exhibition of a proxy till it is called for by the Court. As to proxies generally, see *post*, Pt. II., O. vii., p. 160.

<sup>2</sup> *The Norma*, 34 L. T. N. S. 418 ; and see also *The Inca*, Swa. 370.

<sup>3</sup> *George v. Reg.*, L. R. 1 P. C. 389 ; 4 Moo. P. C. N. S. 287. As to the transmission of the proceeds of sale from a Vice-Admiralty Court to the registry of the High Court for security, see *The Lady Banks*, 1 Hagg. Adm. 306.

<sup>4</sup> 26 & 27 Vict. c. 24, s. 22.

<sup>5</sup> 3 & 4 Will. IV. c. 41, s. 1.

(d) The Admiralty Court of the Cinque Ports;<sup>1</sup>

(a) Appeals from the Royal Courts are either appeals proper or doléances, the latter being appeals or remonstrances in which the conduct of the Court below is complained of.<sup>2</sup> From (a)  
the Royal  
Courts.

Where the ground of appeal is not the misconduct of the Court below, an appeal and not a doléance is the proper remedy.<sup>3</sup> In all appeals from these islands, the respondents are to be summoned by the proper officer of the islands, to appear and answer the said appeals within forty days from the time of being so summoned.<sup>4</sup> Where the Royal Court has refused to allow an appeal, a notice should be given to that Court after application to the Privy Council for leave to appeal, that the Court may be heard at the hearing in objection to such appeal.<sup>5</sup>

No appeal from the Royal Court of Jersey is allowed, unless the value of the subject-matter<sup>6</sup> be £80 per annum.<sup>7</sup> In Guernsey the appealable value is £200, and the appeal must be brought within six months from the date of the judgment complained of.<sup>8</sup>

<sup>1</sup> For the origin of appeals to the King in Council, see Clark's Colonial Law, pp. 106-121.

<sup>2</sup> Report of Royal Commission of 1861, p. liv.

<sup>3</sup> *Re Ames*, 3 Moo. P. C. 409; see *Re Whitfield*, 2 Moo. P. C. 269; 5 Moo. P. C. 157.

<sup>4</sup> Order in Council of July 15, 1835. Macpherson, Privy Council Practice, 224.

<sup>5</sup> *Belson v. Belson*, 7 Moo. P. C. 30, dissenting from the note to *Tupper's Case*, 2 Knapp, P. C. 201.

<sup>6</sup> The values above given are those necessary where the subject-matter of the case is personal property. There is no special rule as to appealable value where the appeal is from the Royal Court as an Admiralty Court.

<sup>7</sup> Order in Council of July 15, 1835. Macph. P. C. Prac. App. 103.

<sup>8</sup> Order in Council of May 13, 1835. Macph. P. C. Prac. App. 101.

It is too late for a respondent at the hearing to take objection to the competency of the appeal on the ground that the prescribed appealable value was not involved, such objection not having been taken in his case. The proper course is for the respondent to move to dismiss the appeal on that ground. *Aldridge v. Cato*, L. R. 4 P. C. 313.

(b) The  
Isle of  
Man  
Court.

(b) From the Court presided over by the water bailiff an appeal lies, in the first instance, either to the Court of Common Law of the Island, or to the Court called the Staff of Government. From the decision of the bailiff alone it lies to the latter, from the verdict of a jury to the Court of Common Law.<sup>1</sup> But jury trial in the Admiralty Court is practically obsolete.<sup>2</sup>

From the Staff of Government an appeal lies to the Judicial Committee,<sup>3</sup> provided that it be brought within six months from the date of the judgment appealed from.<sup>4</sup> There is no fixed amount below which an appeal cannot be brought.<sup>5</sup>

(c) The  
Vice-  
Admiralty  
Courts.  
Under the  
Vice-  
Admiralty  
Courts  
Act, 1863.  
Within  
what time  
appeal is  
to be  
brought.

(c) Appeals from the Vice-Admiralty Courts<sup>6</sup> were transferred from the High Court of Admiralty to the Judicial Committee in 1833,<sup>7</sup> and they are now regulated by the Vice-Admiralty Courts Act, 1863.<sup>8</sup> No appeal is to be allowed, save by permission of the judge, from any decree or order not having the force of a definitive sentence or final order.<sup>9</sup> The appeal from any decree or order must be brought within six months from the date of the decree;<sup>10</sup> the petition of appeal must be entered with

<sup>1</sup> Before 1866 the appeal in such a case lay to the House of Keys. In that year the appellate jurisdiction of the House of Keys was abolished.

<sup>2</sup> See p. 123.

<sup>3</sup> It was held early in the last century to lie to the King in Council: *Christian v. Corren*, 1 P. Wms. 329.

<sup>4</sup> Act of Tynwald of Aug. 11, 1736. *Macph. P. C. Prac. App.* 106.

<sup>5</sup> *Macph. P. C. Prac., ubi supra.*

<sup>6</sup> For the general right of appeal from a Vice-Admiralty Court before the Act of 1833, see Forsyth, *Cases and Opinions*, p. 377.

<sup>7</sup> 3 & 4 Will. IV. c. 41, s. 2.

<sup>8</sup> 26 & 27 Vict. c. 24.

<sup>9</sup> 26 & 27 Vict. c. 24, s. 22. A party denying the right of his opponent to appeal should appear under protest, and not absolutely: *Macph. P. C. Prac.* 204.

<sup>10</sup> The Judicial Committee may nevertheless at their discretion admit an appeal, notwithstanding that six months have elapsed: *Casanova v. Reg.*, L. R. 1 P. C. 115; 3 Moo. P. C. N. S. 484; 36 L. J. P. C. 3. *Reg. v. Diaz*, 6 Moo. P. C. 102, and subject to a counter-petition to dismiss the appeal. The provisions as to the time for appealing apply to foreigners as well as British subjects: *Lopez v.*

the registrar of ecclesiastical and maritime appeals within the proper time.

The Appellate Court has power conferred upon it to enforce its decrees and punish contempt.<sup>1</sup>

Enforcement of decrees.

If the judge of a Vice-Admiralty Court from which an appeal is brought has disregarded an inhibition forbidding him to proceed further in the case, a citation is issued by the Court against him, calling on him to answer articles touching his contempt, and followed by monition and attachment in case of disobedience.<sup>2</sup> The judge must not disregard the inhibition, although he may consider that he is acting for the benefit of all parties.<sup>3</sup>

The rule as to appealable value apparently varies in the different Courts. No appeal lies for costs only.<sup>4</sup> As to appeal on the facts, the Judicial Committee have refused to lay down any exclusive rule; but they are most reluctant to come to a conclusion different from that of the Court below merely upon a balance of testimony.<sup>5</sup> In appeals from Vice-Admiralty Courts, the Appellate Court endeavours to find out the real merits of the question, without requiring that rules of practice should be strictly conformed to.<sup>6</sup> In appeals as to the amount of salvage, the Judicial Committee, like the High Court, is reluctant to review cases of salvage decided in Vice-Admiralty Courts, but will, if the justice of the case requires it, increase the amount.<sup>7</sup>

Appealable value. Appeal for costs. Appeal on facts.

Appeal from salvage award.

Burslem, 4 Moo. P. C. 300. See also *Logan v. Burslem*, 4 Moo. P. C. 284; 7 Jur. 1.

<sup>1</sup> 3 & 4 Will. IV. c. 41, ss. 21, 28; 6 & 7 Vict. c. 38, ss. 7—9; 7 & 8 Vict. c. 69, s. 12; *Lapraik v. Burrows*, 13 Moo. P. C. 132.

<sup>2</sup> *Barton v. Reg.*, 2 Moo. P. C. 19; *Martin v. Mackonochie*, 7 Moo. P. C. N. S. 254; *Macph. P. C. Prac.* 219.

<sup>3</sup> *Barton v. Field*, 4 Moo. P. C. 273.

<sup>4</sup> *The Orient*, L. R. 3 P. C. 696; 8 Moo. P. C. N. S. 74 (appeal from High Court); *Wilson v. Reg.*, L. R. 1 P. C. 405; 4 Moo. P. C. N. S. 307 (appeal from Vice-Admiralty Court).

<sup>5</sup> *The Alice*, L. R. 2 P. C. 245 (see Pt. II., O. lviii., note).

<sup>6</sup> *The Sally*, 2 C. Rob. 229; *The Le Louis*, 2 Dods. 239.

<sup>7</sup> *The Scindia*, L. R. 1 P. C. 241; 4 Moo. P. C. N. S. 84; 35 L. J. P. C. 53.



Admission of further evidence. Jurisdiction of Appellate Court.

Further evidence is admissible upon the appeal, but it can only be adduced after leave is given.<sup>1</sup>

The Judicial Committee, on an appeal from a Vice-Admiralty Court, has not more extended jurisdiction than the Court of first instance.<sup>2</sup>

Cause remitted or retained.

After a decision has been given upon the appeal, the cause may be either remitted or retained, or the cause may be remitted, whilst the taxation and enforcement of costs is retained.<sup>3</sup>

Costs and damages.

The successful party will, as a rule, be entitled to the costs of appeal.<sup>4</sup> But costs may be disallowed at the discretion of the Court, if there is good reason for this course.<sup>5</sup> The costs must be asked for at the hearing.<sup>6</sup> Taxation of costs is allowed, as in the other Superior Courts.<sup>7</sup> Damages and costs below, as well as the costs of appeal, may be awarded to a successful appellant.<sup>8</sup>

Rules of practice.

The practice depends upon the rules framed in pursuance of 6 & 7 Vict. c. 38,<sup>9</sup> and affirmed by Order in

<sup>1</sup> *Guimaraens v. Preston*, 4 Moo. P. C. 167; 6 Jur. 879; *Hocguard v. Reg.*, 11 Moo. P. C. 155. In *The Scindia*, L. R. 1 P. C. 241, leave was refused.

<sup>2</sup> *The John*, 2 Hagg. Adm. 305 (in the Court of Admiralty before the Act of 1833).

<sup>3</sup> Macph. P. C. Prac. 206. The remitter may be allowed to proceed with the case, to transmit evidence, or to decide upon evidence, Macph. P. C. Prac. 142, 144. In *The Slave Grace*, 2 Hagg. 134, Lord Stowell remitted a case affirmed on appeal back to a Vice-Admiralty Court that costs and damages might be decreed.

<sup>4</sup> Order in Council of June 13, 1853. Macph. P. C. Prac. 255; App. 56. In an appeal against an apportionment of salvage between the seamen and the master, the owners, who were cited and appeared as respondents, were allowed costs up to the time when notice was given that no relief would be sought against them: *The Castlerwood*, 4 Asp. M. C. 278.

<sup>5</sup> Macph. P. C. Prac. 256.

<sup>6</sup> Macph. P. C. Prac. 161.

<sup>7</sup> The costs are taxed by the registrar of the High Court (Admiralty Division) in his capacity of Registrar of Ecclesiastical and Maritime cases, 6 & 7 Vict. c. 38, s. 12.

<sup>8</sup> *Rolet v. Reg.*, L. R. 1 P. C. 198; 4 Moo. P. C. N. S. 41; *Casanovo v. Reg.*, L. R. 1 P. C. 268; 4 Moo. P. C. N. S. 121; 36 L. J. P. C. 3.

<sup>9</sup> See the mode of procedure in a maritime appeal set out in Pritch. Adm. Dig. Appendix, *ad fin.*

Council. The forms to be used are contained in a Schedule to the Order.<sup>1</sup>

The scale of fees depends upon an Order in Council Fees. framed in 1842.<sup>2</sup>

(d) Appeals to the Judicial Committee are prosecuted from the Admiralty Court of the Cinque Ports.<sup>3</sup> The Committee will not interfere with salvage awards by that Court, unless clearly erroneous.<sup>4</sup>

(d) The Admiralty Court of the Cinque Ports.

SECTION XI.

*Appeals to the High Court of Justice.*

To the Admiralty Division of the High Court an appeal lies from the decisions of—

- (a) The County Courts,
- (b) The City of London Court,
- (c) The Court of Passage,<sup>5</sup>
- (d) Justices of the Peace,
- (e) The Commissioners within the Cinque Ports.<sup>6</sup>

2. The High Court of Justice.

(a, b, c) An appeal from a County Court, the City of London Court, or the Court of Passage<sup>7</sup> may be brought before the High Court, either by instrument of appeal or by motion.<sup>8</sup>

From (a) the County Courts, &c.

<sup>1</sup> Order of Dec. 11, 1865.

<sup>2</sup> Orders of 10 and 11 Aug., 1842.

<sup>3</sup> Itself a Court of Appeal from the Commissioners. See *post*, pp. 138, 139.

<sup>4</sup> *The Clarisse*, 12 Moo. P. C. 340; Swa. 129. See on the whole subject of this section, Pt. II., O. lviii., Appeals.

<sup>5</sup> *The Dove*, L. R. 3 Ad. 135; 39 L. J. Ad. 46.

<sup>6</sup> 36 & 37 Vict. c. 66, s. 34. Admiralty Appeals from Inferior Courts are, by special exception in Ord. lviii., r. 19, of the Rules of the Supreme Court, 1875, to be assigned to the judge of the Admiralty Division, until further order.

<sup>7</sup> See *The Ganges*, L. R. 5 P. D. 247; 43 L. T. N. S. 12, as to Court of Passage.

<sup>8</sup> No rules to regulate the practice on appeal under the County Courts Admiralty Jurisdiction Act, 1868, were framed. But by rule 77 of the General Orders of 1868 the rules, orders, practice and forms in actions in the County Courts were to be, subject to

Appeal  
under  
County  
Courts  
Admiralty  
Jurisdiction  
Act,  
1868.

If by the former, the instrument of appeal must be lodged in the registry of the High Court within ten days of the date of the decree or order appealed from, but the judge of the Admiralty Division<sup>1</sup> may allow an appeal to be prosecuted after that time has elapsed on sufficient cause being shown.<sup>2</sup> No appeal is allowed where the parties have agreed that the decision of the County Court shall be final,<sup>3</sup> or where the amount decreed or sued for does not exceed £50.<sup>4</sup> The appeal lies as of right from a final decree or order, and by permission of the County Court judge from any interlocutory decree or order.<sup>5</sup> Security for costs of the appeal must be given in the County Court before lodging the instrument of appeal in the registry of the High Court.<sup>6</sup> The costs of appeal are to be paid by the appellant, if unsuccessful, unless the Appellate Court otherwise directs.<sup>7</sup>

Costs.

Appeal  
under  
County

In an appeal by motion, the motion must be made in the Admiralty Division<sup>8</sup> within eight days of the ruling,

those Orders, adopted with reference to Admiralty suits, so far as applicable. This rule has been repealed by the County Court Rules, 1875 (see the table comparing the old and new County Court Rules), and it is therefore most probable that Ord. xxix. of the Rules of 1875, relating to appeals from County Courts by special case, has no application to appeals from County Courts as Courts of Admiralty.

<sup>1</sup> Since the Judicature Acts, 1873 and 1875, an application for leave to appeal is rightly made to the judge of the Admiralty Division sitting as a judge of the High Court of Justice: *The Two Brothers*, L. R. 1 Ad. 52; 45 L. J. Adm. 47.

<sup>2</sup> 31 & 32 Vict. c. 71, s. 27. There is no appeal from this decision: *The Amstel*, L. R. 2 Ad. D. 186; 37 L. T. N. S. 138.

<sup>3</sup> S. 28.

<sup>4</sup> S. 31. *The Falcon*, L. R. 5 P. D. 100; 47 L. J. Ad. D. 56. If a tender is upheld this is the amount "decreed": *The Fyenoord*, 34 L. T. N. S. 918; 3 Mar. L. C. N. S. 218.

<sup>5</sup> *The Elizabeth*, L. R. 3 Ad. 33; 39 L. J. Adm. 53.

<sup>6</sup> 31 & 32 Vict. c. 71, s. 28. *The Forest Queen*, L. R. 3 Ad. 299; 40 L. J. Adm. 17; *The Two Brothers*, L. R. 1 Ad. D. 52, note (1), *ad fin.*; *The Ganges*, L. R. 5 P. D. 247; 43 L. T. N. S. 12.

<sup>7</sup> 31 & 32 Vict. c. 71, s. 30. Security for costs must be given in the County Court, not in the High Court. *The Forest Queen*, L. R. 3 Ad. 299; 40 L. J. Ad. 17.

<sup>8</sup> For an example of such an appeal by motion, see *The Glanibanta*, L. R. 2 Ad. D. 45; 36 L. T. 27.

order, direction, or decision of the County Court judge. Courts Act, 1875. Notes of County Court judge. It is *ex parte* in the first instance. If the High Court be not sitting, the motion may be made before a judge of the Supreme Court in Chambers. A copy of the notes of the County Court judge is to be used and received on the motion and on the hearing of the appeal;<sup>1</sup> and the judge should, when informed of the appeal, give his reasons in writing for his decision.<sup>2</sup> The County Court Rules as to appeal by special case do not apply to appeal by motion.<sup>3</sup> On an appeal from a suit *in rem* in a County Court, which is dismissed, plaintiffs are entitled to a warrant from the High Court to re-arrest the ship.<sup>4</sup> The High Court Evidence. may, under very exceptional circumstances, order witnesses to be examined *vivâ voce* at the hearing of a County Court Appeal,<sup>5</sup> but only those who were examined in the Court below will usually be examined on the appeal, or may receive new evidence; but it will only do so under very exceptional circumstances.<sup>6</sup> On an appeal by motion, the appeal may be on facts.<sup>7</sup> Appeal by motion lies in all cases, whether leave to appeal is necessary or not.<sup>8</sup>

<sup>1</sup> 38 & 39 Vict. c. 50, s. 6. Before this Act it was held that whenever an appeal was probable, notes of the evidence given in the County Court should be taken by a reporter duly appointed: *The Busy Bee*, L. R. 3 Ad. 527; 26 L. T. N. S. 590; General Orders under Act of 1868, r. 32. But this rule is repealed, and not re-enacted by the County Court Rules, 1875.

<sup>2</sup> *The Rathwaite Hall*, 32 L. T. N. S. 841; 2 Mar. L. C. N. S. 210.

<sup>3</sup> County Court Rules, 1875, Ord. xxix., r. 12. If there is a difference between the notes of the County Court judge and those of the short hand writer, the Court will rely on the former: *The Rathwaite Hall*, 32 L. T. N. S. 841; 2 Mar. L. C. N. S. 210.

<sup>4</sup> *The Miriam*, 43 L. J. Adm. 35; 30 L. T. N. S. 537. *The Friar*, 32 L. T. N. S. 572; 44 L. J. Ad. 49.

<sup>5</sup> *The Busy Bee*, L. R. 3 Ad. 527; 26 L. T. N. S. 590.

<sup>6</sup> *The C. S. Butler*, L. R. 4 Ad. 238; 43 L. J. Adm. 17. *The Moorsley*, 29 L. T. N. S. 663 (on ground of surprise). In one case an order was made for the appeal to be heard on *vivâ voce* evidence where no short hand writer's notes had been taken, and it was doubtful if the judge had taken notes: *The Confidence*, 4 Asp. M. C. N. S. 79.

<sup>7</sup> For appeal upon facts in the Probate, Divorce and Admiralty Division, see *Sugden v. Lord St. Leonards*, 1 P. D. 154; 45 L. J. Prob. 49.

<sup>8</sup> *Turner v. G. W. R. Co.*, 2 Q. B. D. 125; 46 L. J. Q. B. 226.

(d) Jus-  
tices of the  
Peace.  
Salvage.

Proceed-  
ings on  
appeal  
from jus-  
tices.

(d) An appeal from a salvage award by justices lies to the Admiralty Division of the High Court, provided that (1) the sum in dispute<sup>1</sup> exceeds £50;<sup>2</sup> (2) the appellant within ten days after the date of the award gives notice to the justices of his intention to appeal;<sup>3</sup> (3) the appellant takes such proceeding as according to the practice of the Court of Appeal is necessary for the institution of the appeal within twenty days from the date of the award.<sup>4</sup> The justices are to transmit to the proper officer of the Court of Appeal a certified copy of the proceedings<sup>5</sup> before them or their umpire, if any, and of the award made by them or him, together with a certificate of the gross value<sup>6</sup> of the article respecting which salvage is claimed, such copy and certificate to be admitted as evidence in the Court of Appeal.<sup>7</sup> The valuation may be made by a

(b) The  
City of  
London  
Court,  
(c) the  
Court of  
Passage.

Appeals from the City of London Court and the Court of Passage are governed by the same practice as from County Courts. The provisions of 30 & 31 Vict. c. 142, s. 35, seem sufficiently wide to include prospectively the appeal by motion under 38 & 39 Vict. c. 50, s. 6: *The Dove*, L. R. 3 Ad. 135; 39 L. J. Adm. 46. It may be a question how far 38 & 39 Vict. c. 50, s. 6, applies to an appeal from the Court of Passage. The words of the County Courts Act, 1867, with regard to the City of London Court, are more decisive than those of the County Courts Admiralty Jurisdiction Act, 1868, with regard to the Court of Passage. Any doubt upon the subject may be set at rest by an order in Council, under the powers given in 38 & 39 Vict. c. 77, s. 15.

<sup>1</sup> *The Andrew Wilson*, Br. & L. 56; 32 L. J. Adm. 104.

<sup>2</sup> *The Mary Anne*, Br. & L. 334; 34 L. J. Adm. 73; 17 & 18 Vict. c. 104, s. 464, and 25 & 26 Vict. c. 63, s. 49, when read together do not make the appeal depend on the claim being for £50 and upwards, and the value of the property saved £1000 and upwards; an appeal lies though the value of the property is under £1000: *The Generous*, L. R. 2 Ad. 57; 37 L. J. Adm. 37.

<sup>3</sup> Verbal notice to the clerk of the justices is not sufficient: *The Industry*, 2 Hagg. Adm. 73 (decided previous to 17 & 18 Vict. c. 104).

<sup>4</sup> 17 & 18 Vict. c. 104, s. 464.

<sup>5</sup> If necessary it seems that the High Court may grant a monition to the justices commanding them to transmit the proceedings.

<sup>6</sup> On the appeal, the justices' certificate of value, if not conclusive, is of great weight: *The Brothers*, 2 Hagg. Adm. 195. *Semble*, that since 25 & 26 Vict. c. 63, s. 50, the certificate of the receiver would be of equal weight.

<sup>7</sup> 17 & 18 Vict. c. 104, s. 465.

valuer appointed by the receiver of wreck for the district, and such valuation is receivable in evidence.<sup>1</sup> The receiver of wreck has power to sell property salvaged in certain cases if an appeal be not prosecuted within twenty days after a sum for salvage has become due, and to pay the salvage to the persons to whom it is due, and the surplus after payment of expenses and salvage to the persons entitled to it.<sup>2</sup>

On an appeal from an award of justices the burthen of proof lies upon the appellant,<sup>3</sup> and the High Court is reluctant to disturb it, especially in cases of small amount, as it relies to some extent on the local skill of the justices. The Court, however, will overrule the award when it is wholly inadequate,<sup>4</sup> or has proceeded on a wrong principle.<sup>5</sup> But the Court will not interfere simply because the apportionment is in some degree objectionable, the award being for a trifling sum.<sup>6</sup>

New evidence may be admitted on the appeal, but usually only as to matters which have arisen since the case was before the justices (*noviter perventa*), and with a liability to pay costs if it be introduced without sufficient cause.<sup>7</sup>

Where there are two sets of salvors, and the first makes a claim summarily before justices, the second, if cognizant of the claim, ought to intervene, and the hearing of an appeal will not be postponed until the case of the second salvors is ready for adjudication.<sup>8</sup>

Where the judgment of justices awarding salvage is reversed in part on appeal by the owners, the High Court

<sup>1</sup> 25 & 26 Vict. c. 63, s. 50.

<sup>2</sup> 17 & 18 Vict. c. 104, s. 469.

<sup>3</sup> *The Cuba*, Lush. 15; 6 Jur. N. S. 152.

<sup>4</sup> *The Henry of Philadelphia*, 1 Hagg. 264; *The Messenger*, Swa. 191; *The Harriet*, Swa. 219; *The Cuba*, *supra*.

<sup>5</sup> *The General Palmer*, 2 Hagg. 323.

<sup>6</sup> *The Vesta*, 2 Hagg. 192.

<sup>7</sup> *The General Palmer*, *supra*; *The Thomas Wood*, 1 W. Rob. 18; *The Generous*, L. R. 2 Ad. 57; 37 L. J. Ad. 37.

<sup>8</sup> *The Eugene*, 3 Hagg. 156.

will not generally give costs.<sup>1</sup> In appeals by salvors or owners, the High Court allows or disallows costs at its discretion.<sup>2</sup>

(e) The  
Cinque  
Ports  
Commis-  
sioners.

(e) An appeal lies from an award of Cinque Ports Commissioners to the High Court,<sup>3</sup> concurrently with the Admiralty Court of the Cinque Ports: the practice on the appeal is the same in both Courts. The party dissatisfied with the Commissioners' award must, within eight days after the award, declare to the Commissioners whether he intends to proceed in the High Court or in the Cinque Ports Court, and he must proceed in the Court chosen within twenty days from the date of the award, by taking out a monition against the opposite party. Bail must be given in double the sum awarded.<sup>4</sup> No ulterior appeal can be prosecuted.<sup>5</sup> The mode of appeal is by rehearing.<sup>6</sup>

New evi-  
dence.

New evidence may be adduced without the restrictions imposed in the case of appeals from County Courts and justices, the rule as to the exclusion of all but *noviter perventa* not applying to an appeal from an award of the Commissioners, which is in fact a rehearing.<sup>7</sup>

Objection  
to jurisdic-  
tion.

An objection to the jurisdiction of the Commissioners must be taken before them, and will not be allowed to be taken on the appeal after the appellants have been allowed to exhibit further proofs, on the express ground of non-compliance with the provisions of the Cinque Ports Act.<sup>8</sup>

Costs and  
damages.

If an appeal by salvors from an award of the Commissioners be entered, and the vessel arrested, but the appeal

<sup>1</sup> *The David Luckie*, 9 "Monthly Law Mag." (Notes of Cases), 212; *The Thomas and William*, 10 *ib.* 215; Pritch. Adm. Dig. 107 n.

<sup>2</sup> *The Oscar*, 2 Hagg. 257; *The Vesta*, 2 Hagg. 292; *The Osiris*, 2 Hagg. Adm. 135; *The William Beckford*, 3 C. Rob. 357.

<sup>3</sup> 1 & 2 Geo. IV. c. 76, s. 4.

<sup>4</sup> S. 4.

<sup>5</sup> S. 5.

<sup>6</sup> *The Caledonia*, L. R. 4 Ad. 11; 42 L. J. Adm. 13. As to tender on appeal, see *post*, Part. II., O. xxx.

<sup>7</sup> *The Caledonia*, *supra*.

<sup>8</sup> *The David Luckie*, 9 "Monthly Law Mag." (Notes of Cases), 209; Pritch. Adm. Dig. 618; *The Elise*, Swa. 436.

be subsequently abandoned, the salvors may be condemned in all costs and damages caused by the latter proceedings.<sup>1</sup>

Costs of appeal are in the discretion of the Appellate Court, as in the case of an appeal from justices.<sup>2</sup>

Costs of appeal.

SECTION XII.

*Appeals to the Admiralty Court of the Cinque Ports.*

To this Court an appeal lies from—

(a) County Courts within the Cinque Ports.

(b) The Commissioners within the Cinque Ports.

The Admiralty Court of the Cinque Ports. From (a) County Courts.

(a) In case of an appeal from a County Court within the Cinque Ports, it lies either to the High Court or to this Court.<sup>3</sup> If it be brought in the latter, the instrument of appeal must be lodged in the registry of the Admiralty Court of the Cinque Ports.<sup>4</sup>

A transfer of a County Court case within the Cinque Ports may be made to this Court instead of to the High Court.<sup>5</sup>

(b) From a salvage award of the Commissioners within the Cinque Ports an appeal lies to either the High Court or this Court, at the option of the parties.<sup>6</sup> The practice on the appeal is the same, in whichever Court the appeal is brought.<sup>7</sup>

<sup>1</sup> *The Gloria de Maria*, Swa. 106.

<sup>2</sup> See *The David Luckie, The Thomas and William, The Henry of Philadelphia, The Oscar*, ante, pp. 137, 138, all which cases seem equally applicable to justices and Cinque Ports Commissioners.

<sup>3</sup> 31 & 32 Vict. c. 71, s. 33.

<sup>4</sup> *Ib.*

<sup>5</sup> S. 8.

<sup>6</sup> 1 & 2 Geo. IV. c. 76, s. 4.

<sup>7</sup> Ss. 4, 5.





## PART II.

### THE PRACTICE OF THE COURT.

#### RULES OF COURT.

[Note.—Where no other provision is made by the Act or these Rules, the present procedure and practice remain in force.]\*

#### ORDER I.

##### FORM AND COMMENCEMENT OF ACTION.

1. All suits which have hitherto been commenced by a cause *in rem* or *in personam* in the High Court of Admiralty, shall be instituted in the High Court of Justice by a proceeding to be called an action.<sup>1</sup>

In an action *in rem* the property in relation to which the claim has arisen, or the proceeds thereof when in Court are proceeded against, and are available to satisfy the claim if established. In an action *in personam* a certain per-

Actions *in rem* and *in personam*.

<sup>1</sup> The following is the practice as to claims in respect of substitutes for seamen who have volunteered into the royal navy, under M. S. A. 1854, ss. 214—220:

By A. C. R. 1859—

- R. 131. A solicitor desiring to obtain repayment under the provisions of the Merchant Shipping Act, 1854, of the excess of wages paid to a substitute hired in the place of a seaman volunteering into the royal navy, shall file a claim, form of which may be obtained in the registry.
- R. 132. If the claim be correct, he shall, on providing the proper stamp, receive a certificate for payment of the sum due.
- R. 133. If the claim be incorrect, he shall, on providing the proper stamp, receive the registrar's opinion in writing.
- R. 134. If the solicitor be dissatisfied with the opinion of the registrar, he may apply to the judge on motion to review the same, as prescribed by the Merchant Shipping Act, 1854.

\* The Admiralty Rules of 1859, which are still in force, are inserted among the following rules, and particularised by the letters "A. C. R., 1859;" they will also be found set out in App. III. Only those of the new rules which touch upon Admiralty actions are inserted in the following pages.

son, as in an ordinary action, is proceeded against, and there is no special object or fund to satisfy the claim. The action *in rem* is peculiar to the Admiralty Division of the High Court of Justice, for, though the jurisdiction formerly vested in the Court of Admiralty has been transferred to the High Court of Justice (J. A. 1873, s. 16), yet all causes and matters over which the Court of Admiralty would formerly have had exclusive cognisance have been transferred to the Admiralty Division (J. A. 1873, s. 34, sub-s. 2 (e); *Humphreys v. Edwards*, 45 L. J. Ch. 112). The action when it is once commenced either *in rem* or *in personam* must continue in the form in which it is begun, and cannot be changed (*The Hope*, 1 W. Rob. 154). If there is a *lis alibi pendens* in respect of a cause of action begun in this country, the Court will order proceedings here to be stayed if the *lis alibi pendens* is continued (*The Catterina Chiazzare*, L. R. 1 Ad. D. 368; 44 L. J. Ad. 105), and that even if the suit abroad is *in personam* and that here is *in rem* (*The Lanarkshire*, 2 Spks. 189).

3. All other proceedings in and applications to the High Court may, subject to these rules, be taken and made in the same manner as they would have been taken and made in any Court in which any proceeding or application of the like kind could have been taken or made if the Act had not been passed.

3a. Forms 2 and 3 in Part I. of Appendix (A) to the rules of the Supreme Court (see App. IV.) shall be read as if the words by leave of the Court or judge were not therein.

By this rule the proceedings by petition under protest to the jurisdiction and by petition in objection to the report of the registrar are preserved.

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## ORDER II.

### WRIT OF SUMMONS, AND PROCEDURE.

- Indorsements on** 1. Every action in the High Court shall be commenced by a writ of summons, which shall be indorsed with a statement of the nature

of the claim made, or of the relief or remedy required in the action, <sup>writs of</sup> and which shall specify the division of the High Court to which it <sup>summons.</sup> is intended that the action should be assigned.

2. Any costs occasioned by the use of any more prolix or other forms of writs and of indorsements thereon, than the forms hereinafter prescribed, shall be borne by the party using the same, unless the Court shall otherwise direct.

In an action *in rem*, if the statement on the writ differs from that in the affidavit to obtain the arrest of the ship, the Court will allow the writ to be amended on application, and the plaintiffs will pay the costs of the application (*The Princess Royal*, L. R. 3 Ad. 27; 39 L. J. Ad. 29). If the amount claimed on the writ proves during the subsequent proceedings to be too small, the Court will enlarge the amount,—if a too small sum was set down through a *bond fide* mistake,—on the application of the plaintiffs, who will pay the costs of such application, but it is doubtful if the bail will also be increased; and see *post*, O. xxvii., r. 11 (*The Johannes*, L. R. 3 Ad. 127; 39 L. J. Ad. 41). The amount indorsed on the writ should be such as may reasonably be expected to cover the amount of the claim and the costs of the proceedings (*The Earl Grey*, 1 Spks. 180). But, if the costs are not covered by the amount indorsed on the writ, the Court will order execution, or a warrant of arrest against property to issue to satisfy the balance if good reason can be shown for this somewhat unusual course (*The Temiscouta*, 2 Spks. 208; *The Freedom*, L. R. 3 Ad. 495; 25 L. T. N. S. 392; and see *post*, note to O. iii., r. 11).

3. The writ of summons for the commencement of an action shall, <sup>Form of</sup> except in the cases in which any different form is hereinafter provided, be in Form No. 1, in Part I. of Appendix (A) hereto, with <sup>writ.</sup> such variations as circumstances may require.

See App. IV.

This rule is only applicable to the case of an action *in personam*. As to actions *in rem*, *post*, r. 7. Actions in

respect of damage by Queen's ships are usually brought against the commander *in personam* (*The Athol*, 1 W. Rob. 374).

Service of writ out of jurisdiction.

4. No writ of summons for service out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be issued without the leave of a Court or judge.

5. A writ of summons to be served out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be in Form No. 2, in Part I. of Appendix (A) hereto, with such variations as circumstances may require. Such notice shall be in Form No. 3 in the same part, with such variations as circumstances may require.

See App. IV.

A writ of summons will not be allowed to be served out of the jurisdiction unless the cause of action has arisen within the territorial jurisdiction of the High Court (*In re The City of Mecca*, 45 L. J. Ad. 92; L. R. 1 P. D. 300; sub. nom. *In re Smith*; *The Vivar*, L. R. 2 P. D. 29; 35 L. T. N. S. 782). The limit has been considered to be low-water mark (*Harris v. The Owners of The Franconia*, L. R. 2 C. P. D. 173; 46 L. J. N. S. C. P. 363; *R. v. Keyn*, L. R. 2 Ex. D. 63; 45 L. J. C. P. 586). As to the manner of obtaining such a writ or notice, see *post*, O. xi., r. 1a.

Writ of summons *in rem*.

7. The writ of summons in every Admiralty action *in rem* shall be in Form No. 4, of Part I. of Appendix (A) hereto, with such variations as circumstances may require.

7a. Form A. in the Appendix to these Rules shall be substituted for the form referred to in Order II., Rule 7, of "The Rules of the Supreme Court."

See *post*, App. IV.

Date of writs.

8. Every writ of summons, and also every other writ, shall bear date on the day on which the same shall be issued, and shall be tested in the name of the Lord Chancellor, or, if the office of Lord Chancellor shall be vacant, in the name of the Lord Chief Justice of England.

## ORDER III.

INDORSEMENT OF CLAIM.<sup>1</sup>

1. The indorsement of claim shall be made on every writ of Indorsement of summons before it is issued. Indorsement of claim.

2. In the indorsement required by Order II., Rule 1, it shall not be essential to set forth the precise ground of complaint, or the precise remedy or relief to which the plaintiff considers himself entitled. The plaintiff may by leave of the Court or judge amend such indorsement so as to extend it to any other cause of action or any additional remedy or relief.

3. The indorsement of claim may be to the effect of such of the Forms in Part II. of Appendix (A) hereto as shall be applicable to the case, or, if none be found applicable, then such other similarly concise form as the nature of the case may require.

For these additional forms, see *post.* Appendix IV.

4. If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, the indorsement shall show, in manner appearing by the statement in Appendix (A) hereto, Part II., section 8, or by any other statement to the like effect, in what capacity the plaintiff or defendant sues or is sued. Indorsement of capacity

See App. IV.

7. Wherever the plaintiff's claim is for a debt or liquidated demand only, the indorsement, besides stating the nature of the claim, shall state the amount claimed for debt, or in respect of such demand, and for costs respectively, and shall further state, that, upon payment thereof within four days after service, or, in case of a writ not for Indorsement of debt.

<sup>1</sup> The special indorsements under r. 6 of this Order, and the consequences thereof being only applicable to a cause *in personam* for a debt or liquidated demand arising in a contract express or implied—as in a wages suit against the owner of a vessel—and being so unusual in the Admiralty Division, since such actions would, as a rule, be brought in one of the other divisions, it has been thought unnecessary to take up space by inserting O. iii., r. 6, O. xiii., r. 3, O. xiv., rr. 1a, 2, 3, 4, 5 and 6, or the cases which have been decided thereon, as they are scarcely connected with the practice of the Admiralty Division.

service within the jurisdiction, within the time allowed for appearance, further proceedings will be stayed. Such statement may be in the form in Appendix (A) hereto, Part II., section 3.<sup>1</sup> The defendant may, notwithstanding such payment, have the costs taxed, and, if more than one-sixth shall be disallowed, the plaintiff's solicitor shall pay the costs of taxation.

**Accounts.** 8. In all cases of ordinary account, as, for instance, in the case of a partnership or executorship or ordinary trust account, where the plaintiff, in the first instance, desires to have an account taken, the writ of summons shall be indorsed with a claim that such account be taken.

Rule 8 applies in actions of co-ownership and mortgage wherein accounts are to be taken.

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## ORDER IV.

### INDORSEMENT OF ADDRESS.

**Indorsement of address.**

1. The solicitor of a plaintiff suing by a solicitor shall indorse upon every writ of summons and notice in lieu of service of a writ of summons the address of the plaintiff, and also his own name or firm and place of business, and also, if his place of business shall be more than three miles from Temple Bar, another proper place, to be called his address for service, which shall not be more than three miles from Temple Bar, where writs, notices, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left for him. And, where any such solicitor is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor.

**When plaintiff sues in person.**

2. A plaintiff suing in person shall indorse upon every writ of summons and notice in lieu of service of a writ of summons his place of residence and occupation, and also, if his place of residence shall be more than three miles from Temple Bar, another proper place, to be called his address for service, which shall not be more than three miles from Temple Bar, where writs, notices, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left with him.

<sup>1</sup> See App. IV.

[The above two Rules are to apply to all cases in which the writ of summons is issued out of the London office, or out of a district registry where the defendant has the option of entering an appearance either in the district registry or the London office.]

As to the formation of district registries, see J. A. 1873, ss. 60, 61 and 62; and J. A. 1875, s. 13. As to proceedings therein, see O. xxxv., *post*. These two rules only apply where the writ of summons is issued from the London office, O. iv., r. ii., Feb. 1876.

3. In all cases where a writ of summons is issued out of a district registry the solicitor shall give on the writ the address of the plaintiff, and his own name or firm and his place of business, which shall, if his place of business be within the district of the registry, be an address for service; and, if such place be not within the district, he shall add an address for service within the district; and where the defendant does not reside within the district, he shall add a further address for service, which shall not be more than three miles from Temple Bar; and where the solicitor issuing the writ is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor. Where the plaintiff sues in person, he shall give on the writ his place of residence and occupation, which shall, if his place of residence be within the district, be an address for service, and if such place be not within the district, he shall add an address for service within the district, and where the defendant does not reside within the district, he shall add a further address for service, which shall not be more than three miles from Temple Bar.

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## ORDER V.

### ISSUE OF WRITS OF SUMMONS.

#### 1. *Place of Issue.*

1. In any action other than a Probate action, the plaintiff, wherever resident, may issue a writ of summons out of the registry of any district. Place of issue.

2. In all cases where a defendant neither resides nor carries on



business within the district out of the registry whereof a writ of summons is issued, there shall be a statement on the face of the writ of summons that such defendant may cause an appearance to be entered at his option either at the district registry or the London office, or a statement to the like effect.

By R. 4, April, 1880, "Every writ of summons not issued out of a District Registry shall be issued out of the Central Office," not from the Registry.

When defendant is within district registry.

3. In all cases where a defendant resides or carries on business within the district, and a writ of summons is issued out of the district registry, there shall be a statement on the face of the writ of summons that the defendant do cause an appearance to be entered at the district registry, or to the like effect.

2. *Option to choose Division in certain Cases.*

Choice of division.

4. Subject to the power of transfer, every person by whom any cause or matter may be commenced in the High Court of Justice which would have been within the non-exclusive cognizance of the High Court of Admiralty if the said Act had not passed, shall assign such cause or matter to any one of the divisions of the said High Court, including the Probate, Divorce, and Admiralty Division, as he may think fit, by marking the document by which the same is commenced with the name of the division, and giving notice thereof to the proper officer of the Court.

This rule allows actions over which the Court of Admiralty and the Common Law Courts had concurrent jurisdiction to be tried either in the Admiralty or any other division. See also J. A. 1875, s. 11, sub-s. 3. Thus, in an action for loss of life by collision at sea, unless the plaintiff wished that the action should be *in rem*, and that it should be tried by a judge alone, without a jury, he would set it down for some other than the Admiralty Division.

The "proper officer of the Court" is the Admiralty Registrar or one of the clerks.

3. *Generally.*

By whom prepared.

5. Writs of summons shall be prepared by the plaintiff or his solicitor, and shall be written or printed, or partly written and partly printed, on paper of the same description as hereby directed to be printed.

See O. lvi., r. 2, as to paper, which is to be cream wove machine drawing foolscap folio paper, 19 lbs. per mill ream.

6. Every writ of summons shall be sealed by the proper officer, *Sealing.* and shall thereupon be deemed to be issued.

The officer is one of the clerks at the Central Office.

7. The plaintiff or his solicitor shall, on presenting any writ of Copy of summons for sealing, leave with the officer a copy, written or printed, *writ.* or partly written and partly printed, on paper of the description aforesaid, of such writ, and all the indorsements thereon, and such copy shall be signed by or for the solicitor leaving the same, or by the plaintiff himself if he sues in person.

8. The officer receiving such copy shall file the same, and an entry *Filing.* of the filing thereof shall be made in a book to be called the Cause Book, which is to be kept in the manner in which Cause Books have heretofore been kept by the Clerks of Records and Writs in the Court of Chancery, and the action shall be distinguished by the date of the year, a letter, and a number, in the manner in which causes are now distinguished in such last-mentioned Cause Books, and when such action shall be commenced in a district registry, it shall be further distinguished by the name of such registry.

9. Notice to the proper officer of the assignment of an action to *Notice.* any division of the Court under section 11 of the Supreme Court of Judicature Act, 1875, or under Rule 4 of this Order, shall be sufficiently given by leaving with him the copy of the writ of summons.

11. "In Admiralty actions *in rem* a warrant for the arrest of property according to the Form A. in the Appendix to these Rules may be issued at the instance either of the plaintiff or of the defendant at any time after the writ of summons has issued, but no warrant of arrest shall be issued until an affidavit by the party or his agent has been filed, and the following provisions complied with." *The warrant for arrest.*

(a) The affidavit shall state the name and description of the party *Affidavit to lead the warrant.* on whose behalf the action is instituted, the nature of the claim, the name and nature of the property to be arrested, and that the claim has not been satisfied.

(b) In an action of wages the affidavit shall state the national character of the vessel proceeded against; and, if against a foreign vessel, that notice of the institution of the action has been given to the Consul of the State to which the vessel belongs, if there be one resident in London [*a copy of the notice shall be annexed to the affidavit*].

(c) In an action of bottomry, the bottomry bond, and if in a foreign language also a notarial translation thereof, shall be produced for the inspection and perusal of the registrar, and a copy of the bond, or of the translation thereof, certified to be correct, shall be annexed to the affidavit.

(d) In an action of distribution of salvage the affidavit shall state the amount of salvage money awarded or agreed to be accepted, and the name, address, and description of the party holding the same.

(e) The Court or Judge may in any case, if he think fit, allow the writ of summons to issue although the affidavit may not contain all the required particulars. In a wages cause he may also waive the service of the notice, and in a cause of bottomry the production of the bond.

A præcipe, bearing a five shilling stamp (for form see App. IV.), must also be filed with this affidavit, according to the practice in the Admiralty Registry. The old practice, therefore, as regards actions *in rem* supplemented by the new writ of summons *in rem*, may be said still to prevail; accordingly r. 8 of A. C. R. 1859 may still be considered partially to be in force. "If the cause is *in rem*, the solicitor may, on filing a præcipe and an affidavit, take out a warrant for the arrest of the property proceeded against." As to service of the warrant, see *post*, p. 164. For Forms of these affidavits, see App. V. The ships of the Crown are not liable to arrest. When such a vessel is to be proceeded against, the registrar will inform the Lords of the Admiralty of the fact, and the Admiralty Proctor will then enter an appearance (*The Athol*, 1 W. Rob. 374);<sup>1</sup> and passengers' wearing apparel on board a ship is free from arrest (*The Willem III.*, L. R. 3 Ad. 487; 25 L. T. N. S. 356). As to the manner of service, see *post*, O. ix., r. 9.

Damages  
for arrest

If an arrest is made in bad faith, or with gross negligence, or if it be continued longer than is necessary, the owner of the vessel is entitled to ask the Court for damages in respect

<sup>1</sup> This is strictly the practice; but now generally the *Plaintiff's Solicitor* gives notice to the *Admiralty Proctor*.

of such arrest (*The Volant*, Br. & L. 321; *The Cheshire Witch*, *ib.* 362; 11 L. T. N. S. 350; *The Evangelismos*, Swa. 378; *The Cathcart*, L. R. 1 Ad. 314; *The Margaret Jane*, L. R. 2 Ad. 345; 38 L. J. Ad. 38); or if made prematurely, as before a bottomry bond is due (*The Eudora*, L. R. 4 P. D. 208; 49 L. J. Ad. 32): but see *The Jane*, 1 Dods. 467.

In order to prevent the arrest of a ship, the plaintiff's solicitors often communicate with the defendants, and ask them to give an undertaking that proper bail shall be forthcoming; if, however, a party desires to prevent the arrest of property in a more formal manner, he must proceed to act under A. C. R. 1859, r. 55, *et seq.*, which are as follows:—

55. A party desiring to prevent the arrest of any property may cause a caveat against the issue of a warrant for the arrest thereof to be entered in the registry. Caveat against the issuing of a warrant.

56. For this purpose he shall cause to be filed in the registry a præcipe, signed by himself or his solicitor, undertaking to enter an appearance in any cause that may be instituted against the said property, and to give bail in such cause in a sum not exceeding an amount to be stated in the præcipe, or to pay such sum into the registry; and a caveat against the issue of a warrant for the arrest of the property shall thereupon be entered in a book to be kept in the registry, called the "Caveat Warrant Book."

57. A solicitor, instituting a cause against any property in respect of which a caveat has been entered in the "Caveat Warrant Book," shall, before filing the præcipe to lead the institution of the cause, serve a copy thereof upon the party on whose behalf the caveat has been entered, or upon his solicitor.

58. Within three days from the filing of the præcipe, the party on whose behalf the caveat has been entered shall, if the sum in which the cause is instituted does not exceed the amount for which he has undertaken, give bail in such sum, or pay the same into the registry.

59. After the expiration of twelve days from the filing of the præcipe, if the party on whose behalf the caveat has been entered shall not have given bail in such sum, or paid the same into the registry, the plaintiff's solicitor may proceed with the cause by default, and on filing his proofs in the registry may have the cause placed on the list for hearing.

60. If, when the cause comes before the judge, he is satisfied that the claim is well founded, he may pronounce for the amount which appears to him to be due, and may enforce the payment thereof by monition and attachment against the party on whose behalf the caveat has been entered, and by the arrest of the property, if it then be or thereafter come within the jurisdiction of the Court.

61. The preceding rules shall not prevent a solicitor from taking out a warrant for the arrest of any property, notwithstanding the entry of a caveat in the "Caveat Warrant Book;" but the party at whose instance any property in respect of which a caveat is entered shall be arrested, shall be liable to be condemned in costs and damages, unless he shall show, to the satisfaction of the judge, good and sufficient reason for having so done.

These rules apply to counter-claims as well as to original actions. As to proceedings by default, O. xiii. and O. xxix.

Bail.

In addition to giving bail or paying money into Court when a caveat is entered against the issue of a warrant, it is also usual for a defendant who appears in an action at an early stage of the proceedings, if the *res* has been arrested, to give bail or pay money into Court, so as to obtain the release of the property, or give bail previously in order to prevent any arrest whatever, as has been already pointed out.

Bail is the substitution of personal security for that of the *res* (*The Duchesse de Brabant*, Swa. 264), and consequently when the *res* is released, it cannot usually be arrested again in the same action, or for the same cause of action (*The Kalamazzoo*, 15 Jur. 885). As a general rule bail is required to the amount of the claim, though, if that exceeds the full value of the property, whether ship, cargo, or freight, it must be given to this amount,—that is, the value at the time of the arrest<sup>1</sup> (*The St. Olaf*, L. R. 2 Ad. 360; 38 L. J. Ad. 41). If the amount of the costs, with or without damages, exceeds the sum for which bail has been given, and there has been no carelessness on the

<sup>1</sup> Vessels are often released in actions of damage, when bail is given to the amount of the statutory liability upon an affidavit as to tonnage and non-privity of owners. See *ante*, pp. 54, 55.

part of the plaintiff, the Court will order the re-arrest of the ship for the satisfaction of such costs (*The Freedom*, L. R. 3 Ad. 495; 41 L. J. Ad. 1).

And if the bail equals the full value of the ship, then the Court will consider the owners personally liable for the costs incurred (*The Temiscouta*, 2 Spks. 208). It is doubtful, however, if the Court will order the re-arrest of a ship for a balance of damages over and above the sum in which bail has been given. It certainly will not when bail has been given to the full value of the ship, and the very principles of giving bail which allow personal security to take the place of the *res* to the amount of the claim, are against permitting such re-arrest (see *The Volunt*, 1 W. Rob. 385; *The Temiscouta*, 2 Spks. 208).

If the amount of bail given before the property is valued proves to be too great when the worth of such property is ascertained, it will be reduced to a proper sum upon application to the Court (*The Duchesse de Brabant*, Swa. 264; *The Chieftain* 32 L. J. Ad. 106; 8 L. T. N. S. 120; *The Staffordshire*, L. R. 4 P. C. 194; 41 L. J. Ad. 49; also as to bail, see A. C. Act, 1861, s. 33).

Bail can be required in respect of a counterclaim by a defendant as well as in an action by a plaintiff, and when the counterclaim is *in personam*, the proceedings by the plaintiff may be stayed till security is given by him (24 Vict. c. 10, s. 34; *The Charkieh*, 42 L. J. Ad. 70; 29 L. T. N. S. 404).

The value of the property proceeded against may be fixed by the parties themselves, or the plaintiff may require it to be appraised by the marshal or his substitutes.

In order to obtain an official appraisal application must be made to the judge in Court by motion, or in chambers by summons, for an order for a commission of appraisal, which will be delivered to the solicitor at the registry (London or district) after a præcipe has been filed.

Official  
appraise-  
ment.

The commission, which will be shortly after issued, directs the marshal to make in writing an inventory of the property, to choose proper persons to appraise the property according to its value, and then to have a certificate of such value reduced into writing signed by himself and the appraiser, and filed in the registry (London or district), together with the commission. An official appraisement is conclusive of the value of the property (*The Cargo ex Venus*, L. R. 1 Ad. 50; 14 W. R. 460).

Unlading  
of cargo.

If it is necessary to unload the cargo, a commission of unlading should be applied for at the same time as the commission of appraisement, in order to save the expense of twice paying the same fees.

The appraisement and unlading must be performed by the marshal (A. C. R., 1859, r. 124). "Every commission for the appraisement of property under the decree of the Court shall, unless the judge shall otherwise order, be executed by the marshal or his substitutes."

When obtained, the commission, together with a præcipe for the execution of the commission, should be left at the marshal's office, and the acts mentioned in the commission will then be performed.

Where persons insist on an official appraisement, though the owners of the property have given in its fair value, they will have to bear the costs of the appraisement (*The Commodore*, 1 Spks. 175*n.*). If there is a substantial difference between the two valuations, the plaintiffs will be entitled to the costs of the valuation (*The Paul*, L. R. 1 Ad. 57; 35 L. J. Ad. 16).

Bail may be given either (I) in the registry or (II) before a standing or special commissioner.

Bail given  
in the  
registry.

I. A. C. R., 1859, r. 39. "If bail is to be given in the registry, the solicitor shall, on filing in the marshal's office a præcipe, receive a notice of bail, a copy of which shall be served on the adverse solicitor." The præcipe is obtained at the registry. For form see App. IV.

A. C. R., 1859, r. 40. "After the expiration of twenty-four hours from the time when the notice of bail shall have been so served, if the marshal has reported as to the sufficiency of the sureties, the solicitor shall be entitled to take up the marshal's report. He shall then file in the registry a præcipe with the notice of bail and the marshal's report, and shall be informed at what hour the sureties may attend." Two sureties are the ordinary number, but they must not be partners (*The Corner*, Br. & Lush. 161 ; 33 L. J. Ad. 17). If there is an objection to the sureties it must be taken at once before the judge, but the marshal's report is seldom overruled, and when an objection is wrongly made it will be dismissed with costs. See p. 156.

Sureties.

A. C. R., 1859, r. 41. "The bail bond shall be signed by the sureties, and shall be taken either before the registrar, or, by the registrar's directions, before one of the clerks in the registry." For form see App. IV. Where sureties are resident in the same town but cannot attend at the registry, a clerk will be sent to their residence, but a special fee of £1 is then charged. The above directions apply to district registries (J. A., 1873, s. 64 ; O. xxxv., r. 1a). The description and address of the sureties should appear in the bond, though their absence will not actually invalidate it (*The Tamarac*, Lush. 28).

II. Bail before a commissioner may be taken before a special commissioner or before a standing commissioner. Standing commissioners are permanently appointed in various parts. A. C. R., 1859, r. 42. "Bail may be taken under a special commission, or before standing commissioners to be appointed by the judge ; but in every such case the sureties shall justify." To justify is to make an affidavit that the surety is worth more than the sum in which bail is to be given after the payment of all his debts. No report from the marshal is required. To obtain such commission a præcipe for a commission to take bail must be handed in to the registry ; the documents

Bail before  
a commis-  
sioner.



will then be prepared and should then be forwarded to the commissioner. A. C. R., 1859, r. 43. "A bail bond taken before a commissioner appointed under a special or a standing commission shall not be filed in the registry until after the expiration of twenty-four hours from the time when a notice containing the names and addresses of the sureties and of the commissioner before whom the bail was taken shall have been served upon the adverse solicitor; and a copy of the notice verified by affidavit shall be filed with the bail bond." The defendant's solicitor must take care that after this notice the documents are filed. With the exception of obtaining a special commission the proceedings before a standing commissioner are the same; but by A. C. R., 1859, r. 44, "A commissioner appointed under a special or standing commission shall not take bail on behalf of any person for whom he or any person in partnership with him is acting as proctor, attorney, solicitor, or agent;" and by r. 45, "The delays required by the preceding rules in regard to the taking of bail may be dispensed with by the consent of the solicitors in the cause." If the plaintiff is not satisfied with the bail he enters a caveat against the release (see p. 158). The defendant will then either give satisfactory bail or move for the release of the ship, and the objection to the bail being mentioned to the Court, it will order the sureties to be examined before the registrar on their affidavits of justification. If the objection is not upheld by the registrar, the plaintiffs will be condemned in the costs occasioned by their objection (*The Don Ricardo*, L. R. 5 P. D. 121; 49 L. J. Ad. D. 28).

Payment  
into Court  
to obtain  
release of  
arrested  
property.

By A. C. R., 1859, r. 48, "A solicitor may obtain the release of any property by paying into the registry the sum in which the cause has been instituted." And by A. C. R., 1859, r. 49, "Cargo arrested for the freight only may be released by filing an affidavit as to the value of the freight, and by paying the amount of the freight into the registry." See p. 165. By A. C. R., 1859, r. 127, "All monies

shall be paid to the account of the registrar of the Admiralty Division, at the Bank of England, upon receivable orders to be obtained in the registry." A copy of the receipt for the sum paid in and a notice thereof should then be served on the adverse solicitor, and the original filed. By r. 128, "Orders for the payment of money out of Court shall be signed by the judge;" but it will not generally be paid until the end of the action (*The Annie Childs*, Lush. 509). The money will not bear interest without an application is made to the Court with that object (*The North American*, Lush. 79; 5 Jur. N. S. 659); and it is allowed only if the sum is large.

The manner of releasing property under ordinary circumstances is regulated by A. C. R., 1859, r. 46, "Property arrested by warrant shall only be released under the authority of an instrument issued from the registry, to be called a release." The *præcipe* on which the release is obtained recites the fact that bail has been given or money paid in respect of the cause of action, and that there is no caveat against the release of the property outstanding. If parts of the property under arrest are released at different times, separate releases are necessary. Also, by A. C. R., 1859, r. 47, "A solicitor at whose instance any property has been arrested may, *before an appearance has been entered*, obtain the release thereof by filing a *præcipe* to withdraw the warrant." The re-  
lease.

As regards r. 49, "Cargo arrested for the freight only may be released by filing an affidavit as to the value of the freight, and by paying the amount of the freight into the registry:" the value is that which is due under the charter-party or bill of lading, and the amount is less the expenses of paying in. Release of  
cargo.

By A. C. R., 1859, r. 52, "The release, when obtained, shall be left with a *præcipe* in the marshal's office by the solicitor taking out the same, who shall also at the same time pay all costs, charges, and expenses attending the

care and custody of the property whilst under arrest, and the marshal shall thereupon release the property."

Caveat  
against  
release of  
property  
arrested.

To prevent the release of any property under arrest, proceedings must be taken under A. C. R., 1859, r. 53.

"A solicitor in a cause shall file in the registry a præcipe, and thereupon a caveat against the release of the property shall be entered in a book to be kept in the registry, called the 'Caveat Release Book,' and thereupon no proceedings can be taken without notice to the person who enters such caveat. And care should be taken not to fall under r. 54. "A party delaying the release of any property by the entry of a caveat shall be liable to be condemned in costs and damages unless he shall show to the satisfaction of the judge good and sufficient reason for having so done" (on this rule see *The Corner*, Br. & L. 161; 12 L. T. N. S. 62; *The Don Ricardo*, L. R. S. P. D. 121; 49 L. J. Ad. 28). The damages will be assessed by the registrar.

When such a caveat is entered the defendant may apply by motion or summons to overrule it, and ask for the release of the vessel, if there is good reason for such a course. If an action is transferred from a County Court to the High Court, and the *res* is under arrest in the Superior Court in respect of other actions, A. C. R. 1859, r. 53 (*supra*), is applicable (*The Rio Lima*, 28 L. T. N. S. 774; 2 Mar. L. C. N. S. 34).

Prelimina-  
ries to bail  
in salvage  
actions.

To the general proceedings as to bail, actions for salvage are an exception. Here the plaintiff is entitled to have the value of the *res* ascertained before it passes out of the hands of the Court. This value can be obtained in two ways. By A. C. R., 1859, r. 50, "In a cause of salvage the value of the property under arrest shall be agreed, or an affidavit of value filed, before the property is released."

Agree-  
ment on or  
affidavit of  
value.

(a) This agreement is usually binding on the parties unless exceptional circumstances can be shown by affidavit for altering the agreed amount. (b) The affidavit should

contain the value of the property saved when the salvors' services were concluded. The amount, as shown in the affidavit, if it is given wrongly by a *bond fide* mistake, will be altered on application to the Court, even after a decree has been made (*The James Armstrong*, L. R. 4 Ad. 380; 33 L. T. N. S. 390). But generally, the value as shown is conclusive, *e.g.*, when the ship was afterwards sold for a larger sum (*The Betsy*, 5 C. Rob. 296; *The Hanna*, 37 L. T. N. S. 364; 3 Asp. M. C. N. S. 503). If the salvors are not satisfied with this value they are entitled to have the property officially appraised. As to official appraisements, see *ante*, p. 153. As to power of receivers of wreck, see *ante*, p. 33.

The three following rules are applicable to caveats generally.

174. A caveat, whether against the issue of a warrant, the release of property, or the payment of money out of the registry, shall not remain in force for more than six months from the day of the date thereof. Duration of caveat.

175. A caveat may be withdrawn by the party on whose behalf it has been entered, or by his solicitor; but the præcipe to lead the withdrawal thereof shall, save by permission of the registrar, be signed by the same person who signed the præcipe to lead the entry of the caveat. Withdrawal of caveat.

176. Application may be made to the judge on motion or by summons to overrule any caveat.

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## ORDER VI.

### CONCURRENT WRITS.

1. The plaintiff in any action may, at the time of or at any time during twelve months after the issuing of the original writ of summons, issue one or more concurrent writ or writs, each concurrent writ to bear teste of the same day as the original writ, and to be marked with a seal bearing the word "concurrent," and the date of issuing the concurrent writ: and such seal shall be impressed upon the writ by the proper officer: Provided always, that such concur- Concurrent writs

rent writ or writs shall only be in force for the period during which the original writ in such action shall be in force.

2. A writ for service within the jurisdiction may be issued and marked as a concurrent writ with one for service, or whereof notice in lieu of service is to be given, out of the jurisdiction ; and a writ for service, or whereof notice in lieu of service is to be given, out of the jurisdiction, may be issued and marked as a concurrent writ with one for service within the jurisdiction.

## ORDER VII.

### DISCLOSURE BY SOLICITORS AND PLAINTIFFS.

Disclosure  
of client  
by soli-  
citor.

1. Every solicitor whose name shall be indorsed on any writ of summons shall, on demand in writing made by or on behalf of any defendant who has been served therewith or has appeared thereto, declare forthwith whether such writ has been issued by him or with his authority or privity ; and if such solicitor shall declare that the writ was not issued by him or with his authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereupon without leave of the Court or a judge.

It was the ancient practice of the Court that the proctor should exhibit his proxy, showing that he was authorized to appear for his client. But this practice has gradually fallen into disuse, and it was of late always assumed that a solicitor who appeared for a party was duly authorized to do so ; at the same time the Court, if it though right, could always require the solicitor to state by name the parties for whom he was authorized to appear (*The Euxine*, L. R. 4 P. C. 8 ; 41 L. J. Ad. 17). The above rule will now govern the practice as between plaintiffs' solicitor and the defendant ; but as regards the power of the Court to inquire, the old practice remains in force.

Payment of solicitors' charges by a client, if he changes them during the action, will be enforced by the Court before allowing it to proceed (*The Oneiza*, L. R. 4 Ad. 36 ; 1 Asp. M. C. N. S. 470).

Disclosure 2. When a writ is sued out by partners in the name of their firm,

the plaintiffs or their solicitors shall, on demand in writing by or on behalf of any defendant, declare forthwith the names and places of residence of all the persons constituting the firm. And, if the plaintiffs or their solicitor shall fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as the Court or a judge may direct. And, when the names of the partners are so declared, the action shall proceed in the same manner and the same consequences in all respects shall follow as if they had been named as the plaintiffs in the writ. But all proceedings shall nevertheless continue in the name of the firm.

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### ORDER VIII.

#### RENEWAL OF WRIT.

1. No original writ of summons shall be in force for more than twelve months from the day of the date thereof, including the day of such date; but, if any defendant therein-named shall not have been served therewith, the plaintiff may before the expiration of the twelve months apply to a judge, or the district registrar, for leave to renew the writ; and the judge or registrar, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may order that the original or concurrent writ of summons be renewed for six months from the date of such renewal, and so from time to time during the currency of the renewed writ. And the writ shall in such case be renewed by being marked with a seal bearing the date of the day, month, and year of such renewal; such seal to be provided and kept for that purpose at the proper office, and to be impressed upon the writ by the proper officer, upon delivery to him by the plaintiff or his solicitor of a memorandum in Form No. 5, in Appendix (A), Part I.;<sup>1</sup> and a writ of summons so renewed shall remain in force and be available to prevent the operation of any statute whereby the time for the commencement of the action may be limited, and for all other purposes, from the date of the issuing of the original writ of summons.

2. The production of a writ of summons purporting to be marked with the seal of the Court showing the same to have been renewed in manner aforesaid, shall be sufficient evidence of its having been so renewed, and of the commencement of the action as of the first date of such renewed writ for all purposes.

<sup>1</sup> See App. IV.

By r. 166, 1859, every instrument must have been served within six months from the day on which it bore date, a warrant of arrest in an action *in rem* must therefore still be served within six months. As to service, see *post*, O. ix., r. 9. When the original writ is lost it cannot be renewed (*Davies v. Garland*, 1 Q. B. D. 250).

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## ORDER IX.

### SERVICE OF WRIT OF SUMMONS.

#### 1. *Mode of Service.*

1. No service of writ shall be required when the defendant, by his solicitor, agrees to accept service, and enters an appearance.

Personal  
service.

2. When service is required the writ shall, wherever it is practicable, be served in the manner in which personal service is now made; but, if it be made to appear to the Court or to a judge that the plaintiff is from any cause unable to effect prompt personal service, the Court or judge may make such order for substituted or other service, or for the substitution of notice for service, as may seem just.

Rule 1 applies both to an action *in rem* and *in personam*, but r. 2 only to an action *in personam*.

As to personal service, see Archbold's Practice, p. 231. As to service when defendant absconds, see *Cook v. Dey*, 2 Ch. D. 218; 45 L. J. Ch. 611; and *Raphael v. Ongley*, 34 L. T. N. S. 124.

#### 2. *On Particular Defendants.*

Husband  
and wife.

3. When husband and wife are both defendants to the action, service on the husband shall be deemed good service on the wife, but the Court or a judge may order that the wife shall be served with or without service on the husband.

Infant.

4. When an infant is a defendant to the action, service on his or her father or guardian, or if none, then upon the person with whom the infant resides or under whose care he or she is, shall, unless the Court or judge otherwise orders, be deemed good service on the

infant; provided that the Court or judge may order that service made or to be made on the infant shall be deemed good service.

5. When a lunatic or person of unsound mind not so found by Lunatic. inquisition is a defendant to the action, service on the committee of the lunatic, or on the person with whom the person of unsound mind resides, or under whose care he or she is, shall, unless the Court or judge otherwise orders, be deemed good service on such defendant.

These rules can only refer to actions *in personam*.

### 3. On Partners and other Bodies.

6. Where partners are sued in the name of their firm, the writ Partners. shall be served either upon any one or more of the partners or at the principal place within the jurisdiction of the business of the partnership, upon any person having at the time of service the control or management of the partnership business there; and, subject to the rules hereinafter contained, such service shall be deemed good service upon the firm.

6a. Where one person carrying on business in the name of a firm apparently consisting of more than one person, shall be sued in the firm name, the writ may be served at the principal place within the jurisdiction of the business so carried on, upon any person having at the time of service the control or management of the business there; and, subject to any of the Rules of the Supreme Court, such service shall be deemed good service on the person so sued.

7. Whenever by any statute provision is made for service of any writ of summons, bill, petition, or other process upon any corporation, or upon any hundred, or the inhabitants of any place, or any society or fellowship, or any body or number of persons, whether corporate or otherwise, every writ of summons may be served in the manner so provided.

These rules again are only applicable to actions *in personam*.

9. "In Admiralty actions *in rem* the warrant of arrest shall be served by the marshal or his substitutes, whether the property to be arrested be situate within the port of London or elsewhere within the jurisdiction of the Court, and the solicitor issuing the warrant shall, within six days from the service thereof, file the same in the registry." <sup>warrant of arrest.</sup>



As regards the arrest of property elsewhere than in London, r. 3 of the Additional Rules of 1871 applies.

R. 3. If the property to be arrested be situate elsewhere than in the port of London, the warrant shall be executed either by the marshal or by the collector of the customs for the district within which the property happens to be.

As to time of service, see *ante*, O. viii., rr. 1 and 2.

In the district registries and outports the collectors of customs act as the marshal's substitutes. After the arrest the marshal is liable for the safe custody of the matter arrested (*The Hoop*, 4 C. Rob. 145); and any person who interferes with or carries away this property is liable to an attachment for contempt (*The Petrel*, 3 Hagg. 229).

A warrant against a ship extends to sails and rigging detached from it (*The Alexander*, 1 Dods. 282), but not to passengers' wearing apparel and personal luggage (*The Willem III.*, L. R. 3 Ad. 487; 25 L. T. N. S. 386).

And subsequent accretions in the value of a ship caused by repairs made by an owner are subject to the rights of a claimant (*The Aline*, 1 W. Rob. 111).

If a second action is commenced against property under arrest, the service of the warrant is effected in the same manner as in the first action; if the proceeds, however, are in Court, the warrant must then be served on the registrar. As will be observed on referring to O. xiii., *post*, p. 171, service of a warrant is necessary in default actions.

Manner  
of serving.

10. "In Admiralty actions *in rem*, service of a writ of summons against ship, freight, or cargo on board, is to be effected by nailing or affixing the original writ for a short time on the mainmast, or on the single mast of the vessel, and, on taking off the process, leaving a true copy of it nailed or fixed in its place."

Any person may serve the writ of summons *in rem*. Service of a writ of summons *in rem* is equivalent to a notice to the owners of the subject-matter of the service and to all who may be interested in it (*The Dowthorpe*, 2 W. Rob. 80). And therefore, in order that the service may be

valid, the terms of this rule must be strictly followed (*The Marie Constance*, 37 L. T. N. S. 366; 3 Mar. L. C. N. S. 505).

If a second action is begun against property already under arrest, the writ is served in the usual way on the *res*. Where a ship has been sold and the proceeds paid into Court, the registrar should be served with the writ (*The Cassiopeia*, L. R. 4 P. D. 188 (C. A.); 48 L. J. Ad. D. 39).

11. If the cargo has been landed or transhipped, service of the writ of summons to arrest the cargo and freight shall be effected by placing the writ for a short time on the cargo, and, on taking off the process, by leaving a true copy upon it. Service on cargo and freight.

There is a mistake in this rule: the writ of summons cannot arrest the cargo; the rule must therefore be read as if the words "to arrest" were omitted, or instead of the above words "on" should be read.

The freight itself cannot be arrested, but when it remains unpaid the cargo can be arrested as representing it (*The Leo*, 31 L. J. Ad. 78; 6 L. T. N. S. 58), but will be released as soon as the amount of the freight has been paid into Court and an affidavit of value made (see p. 156); this same rule applies if the shipowner is also owner of the cargo (*The Victor*, Lush. 72). Nor can the cargo be arrested in a damage suit, except as representing freight (*The Flora*, L. R. 1 Ad. 45). The usual way, however, of proceeding against the freight is to move the judge to make an order commanding those from whom the freight is due to pay the money into Court. The freight due on the whole of the cargo at the time a lien attaches is payable as well as on that part which is on board at the time of the arrest (*The Roeliff*, L. R. 2 Ad. 363; 38 L. J. Ad. 56).

12. If the cargo be in the custody of a person who will not permit access to it, service of the writ may be made upon the custodian. Service on custodian of cargo.

This rule applies only to cargo which has been landed.

*Generally.*

Indorse-  
ment of  
service.

13. The person serving a writ of summons shall, within three days at most after such service, indorse on the writ the day of the month and week of the service thereof, otherwise the plaintiff shall not be at liberty, in case of non-appearance, to proceed by default; and every affidavit of service of such writ shall mention the day on which such indorsement was made.

This rule applies also to an amended writ (*The Cassiopeia*, L. R. 4 P. D. 188; 48 L. J. Ad. D. 39).

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ORDER X.

SUBSTITUTED SERVICE.

Substi-  
tuted ser-  
vice.

Every application to the Court or a judge, under Order IX., Rule 2, for an order for substituted or other service, or for the substitution of notice for service, shall be supported by an affidavit setting forth the grounds upon which the application is made.

This rule of course only applies to an action *in personam*. By A. C. Act, 1861, s. 20, if reasonable efforts to effect service have been made, and the person to be served is aware of the writ, or wilfully evades service, then application is to be made to the judge. (See App. I., p. xxviii).

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ORDER XI.

SERVICE OUT OF THE JURISDICTION.

Service  
out of  
juris-  
diction.

1. Service out of the jurisdiction of a writ of summons or notice of a writ of summons may be allowed by the Court or a judge whenever the whole or any part of the subject-matter of the action is land or stock, or other property situate within the jurisdiction, or any act, deed, will, or thing affecting such land, stock, or property, and whenever the contract which is sought to be enforced or rescinded, dissolved, annulled, or otherwise affected in any such action, or for the breach whereof damages or other relief are or is demanded in such action, was made or entered into within the jurisdiction, and when-

ever there has been a breach within the jurisdiction of any contract wherever made, and whenever any act or thing sought to be restrained or removed, or for which damages are sought to be recovered, was or is to be done or is situate within the jurisdiction.

1a. Whenever any action is brought in respect of any contract which is sought to be enforced or rescinded, dissolved, annulled, or otherwise affected in any such action, or for the breach whereof damages or other relief are or is demanded in such action, when such contract was made or entered into within the jurisdiction, or whenever there has been a breach within the jurisdiction of any contract wherever made, the judge, in exercising his discretion as to granting leave to serve such writ or notice on a defendant out of the jurisdiction, shall have regard to the amount or value of the property in dispute or sought to be recovered, and to the existence in the place of residence of the defendant, if resident in Scotland or Ireland, of a local Court of limited jurisdiction having jurisdiction in the matter in question, and to the comparative cost and convenience of proceeding in England or in the place of such defendant's residence; and in all the above-mentioned cases no such leave is to be granted without an affidavit stating the particulars necessary for enabling the judge to exercise his discretion in manner aforesaid, and all such other particulars (if any) as he may require to be shown.

See *ante*, O. ii., r. 5, note.

Rule 1 applies also to third parties, to whom notice is given under O. xvi. (*The Swansea Shipping Co. v. Duncan*, 1 Q. B. D. 644; 45 L. J. Q. B. 638).

3. Every application for an order for leave to serve such writ or notice on a defendant out of the jurisdiction shall be supported by evidence, by affidavit, or otherwise, showing in what place or country such defendant is or probably may be found, and whether such defendant is a British subject or not, and the grounds upon which the application is made. Leave for service out of the jurisdiction.

4. Any order giving leave to effect such service or give such notice shall limit a time after such service or notice within which such defendant is to enter an appearance, such time to depend on the place or country where or within which the writ is to be served or the notice given.

5. Notice in lieu of service shall be given in the manner in which writs of summons are served.

## ORDER XII.

## APPEARANCE.

Appear-  
ance.

1 and 1a. Except in the cases otherwise provided for by these Rules a defendant shall enter his appearance in London at the Central Office.

2. If any defendant to a writ issued in a district registry resides or carries on business within the district, he shall appear in the district registry.

In district  
registry.

3. If any defendant neither resides nor carries on business in the district, he may appear either in the district registry or in London.

4. If a sole defendant appears, or all the defendants appear in the district registry, or if all the defendants who appear, appear in the district registry, and the others make default in appearance, then, subject to the power of removal hereinafter provided, the action shall proceed in the district registry.

5. If the defendant appears, or any of the defendants appear, in London, the action shall proceed in London; provided that if the Court or a judge shall be satisfied that the defendant appearing in London is a merely formal defendant, or has no substantial cause to interfere in the conduct of the action, such Court or judge may order that the action may proceed in the district registry, notwithstanding such appearance in London.

When a writ is issued from a district registry, and the defendant enters an appearance in London, the memorandum of appearance should recite that the action has been begun in the district registry, its title in that registry, and that the defendant is out of the jurisdiction of that registry (*The General Birch*, 33 L. T. N. S. 792).

Memoran-  
dum of  
appear-  
ance.

6. A defendant shall enter his appearance to a writ of summons by delivering to the proper officer a memorandum in writing dated on the day of its delivery, and containing the name of the defendant's solicitor, or stating that the defendant defends in person.

He shall at the same time deliver to the officer a duplicate of the memorandum, which the officer shall seal with the official seal showing the date on which it is sealed, and then return to the person entering the appearance, and the duplicate memorandum so sealed shall be a certificate that the appearance was entered on the day indicated by the seal.

Notice of the appearance must be sent on the same day to the plaintiff's solicitor. (R. 6, April, 1880.)

An absolute appearance once entered cannot be recalled (*The Blakeney*, Swa. 428). But the defendant if he considers that the Court has no jurisdiction over the subject-matter of the action may appear under protest, as this practice is still in force, taking advantage of A. C. R., 1859, r. 37: "If the solicitor intends to object to the jurisdiction of the Court the appearance may be entered under protest" (*The Vivar*, L. R. 2 Ad. 29; 35 L. T. N. S. 782). The memorandum of appearance should in that case bear the words "under protest" on it.

When the defendant has thus appeared under protest he may deliver a petition on protest, wherein the facts which show the want of jurisdiction should be stated (*The Pieve Superiore*, L. R. 5 P. C. 482; 43 L. J. Ad. 20). With the exception of the commencement, the form of the petition should be that of an ordinary statement of claim. See Precedent, App. VI. To this the plaintiff replies, or he may move the Court to reject the petition. A more expeditious and ordinary course for a defendant under protest to pursue is to move the Court to dismiss the action or statement of claim. Should the protest be overruled the action will proceed in the ordinary course.

7. The solicitor of a defendant appearing by a solicitor shall state in such memorandum his place of business, and, if the appearance is entered in the London office, a place, to be called his address for service, which shall not be more than three miles from Temple Bar; and, if the appearance is entered in a district registry, a place to be called his address for service, which shall be within the district.

8. A defendant appearing in person shall state in such memorandum his address, and, if the appearance is entered in the London office, a place to be called his address for service, which shall not be more than three miles from Temple Bar; and, if the appearance is entered in a district registry, a place, to be called his address for service, which shall be within the district.

9. If the memorandum does not contain such address, it shall not be received; and, if any such address shall be illusory or fictitious, the appearance may be set aside by the Court or a judge, on the application of the plaintiff.

10. The memorandum of appearance shall be in the Form No. 6, Appendix (A), Part I., with such variations as the circumstances of the case may require.

It has been decided in the Admiralty registry that in an action *in rem* the names of the parties need not necessarily appear. See O. vii. For this form see App. IV.

Entry of appearance.  
Appearance by partners.

11. Upon receipt of a memorandum of appearance, the officer shall forthwith enter the appearance in the cause book.

12. Where partners are sued in the name of their firm, they shall appear individually in their own names. But all subsequent proceedings shall, nevertheless, continue in the name of the firm.

12a. Where any person carrying on business in the name of a firm apparently consisting of more than one person, shall be sued in the name of the firm, he shall appear in his own name; but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

By two or more defendants.

13. If two or more defendants in the same action shall appear by the same solicitor and at the same time, the names of the defendants so appearing shall be inserted in one memorandum.

This last rule is of importance, since in actions *in rem* there may often be several defendants; as to persons who may appear in an action *in rem*, see r. 17, *post*.

Non-entry of appearance by solicitor.  
Time of appearance.

14. A solicitor not entering an appearance in pursuance of his written undertaking so to do on behalf of any defendant shall be liable to an attachment.

15. A defendant may appear at any time before judgment. If he appear at any time after the time limited for appearance he shall, on the same day, give notice thereof to the plaintiff's solicitor, or to the plaintiff himself if he sues in person, and he shall not, unless the Court or a judge otherwise orders, be entitled to any further time for delivering his defence, or for any other purpose, than if he had appeared according to the writ.

Intervention of any person having an interest in the property arrested.

17. In an Admiralty action *in rem*, any person not named in the writ may intervene and appear as heretofore, on filing an affidavit showing that he is interested in the *res* under arrest, or in the fund in the registry.

The first part of Rule 17 distinctly enunciates what was long a practice in the Court of Admiralty. A sub-

stantial interest in the *res* or fund is required, or in other words an interest which may be injuriously affected by the decree in the action (*The Dowthorpe*, 2 W. Rob. 73 (77)). This principle does not in reality conflict with the judgment in *The Killarney*, Lush. 427 (435); 6 L. T. N. S. 908, where it was assumed that the interests of third parties would from the nature of the defendant's case be properly cared for without the necessity of a separate appearance.

So, a mortgagee may appear (*The Julinder*, Spk. 75), and the trustee of a bankrupt (*The Dowthorpe*, *supra*), and underwriters, as long as they fall within the above principle (*The Regina del Mare*, Br. & Lush. 315). The owners of a ship which has been found to blame in a collision suit may appear in an action of salvage against the injured and salved ship, and, if they put in bail in lieu of the latter, may conduct the defence, whilst the bail of the salved ship will be discharged (*The Diana*, 31 L. T. N. S. 203; 2 Mar. L. C. N. S. 366). Also the owners of cargo may appear in a wages suit against ship and freight, where the claimants desire to be preferred to bottomry bondholders, since the result may cause the latter to have a claim against the cargo (*The Union*, Lush. 128; 30 L. J. Ad. 19). Adverse claimants would, it seems, also be allowed to appear (*The India*, 32 L. J. Ad. 35; *The Volant*, Br. & Lush. 321; *The Eastern Belle*, 33 L. T. N. S. 214).

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### ORDER XIII.

#### DEFAULT OF APPEARANCE.

1. Where no appearance has been entered to a writ of summons for a defendant who is an infant, or a person of unsound mind not so found by inquisitions, the plaintiff may apply to the Court or a judge for an order that some proper person be assigned guardian of such defendant, by whom he may appear and defend the action. But no such order shall be made unless it appears on the hearing of such

Default of  
appear-  
ance in  
actions in  
personam.



application that the writ of summons was duly served, and that notice of such application was after the expiration of the time allowed for appearance, and at least six clear days before the day in such notice named for hearing application, served upon or left at the dwelling-house of the person with whom or under whose care such defendant was at the time of serving such writ of summons, and also (in the case of such defendant being an infant not residing with or under the care of his father or guardian) served upon or left at the dwelling-house of the father or guardian, if any, of such infant, unless the Court or judge at the time of hearing such application shall dispense with such last-mentioned service.

This rule is applicable only to actions *in personam*.

2. Where any defendant fails to appear to a writ of summons, and the plaintiff is desirous of proceeding upon default of appearance under any of the following rules of this order, or under Order XV., Rule 1, he shall, before taking such proceeding upon default, file an affidavit of service, or of notice in lieu of service, as the case may be.

Default in  
claim for  
liquidated  
demand.

5. Where the defendant fails to appear to the writ of summons, and the writ is not specially indorsed, but the plaintiff's claim is for a debt or liquidated demand only, no statement of claim need be delivered, but the plaintiff may file an affidavit of service or notice in lieu of service, as the case may be, and a statement of the particulars of his claim in respect of the causes of action stated in the indorsement upon the writ, and may, after the expiration of eight days, enter final judgment for the amount shown thereby and costs to be taxed, provided that the amount shall not be more than the sum indorsed upon the writ, besides costs.

5a. Where a defendant fails to appear to a writ of summons issued out of a district registry, and the defendant had the option of entering an appearance either in the district registry or in the London office, judgment for want of appearance shall not be entered by the plaintiff until after such time as a letter posted in London on the previous evening in due time for delivery to him on the following morning, ought in due course of post to have reached him.

The above rules only apply to actions *in personam*.

Proceed-  
ings in  
default of

(10.) In an Admiralty action *in rem* in which an appearance has not been entered, the plaintiff may proceed as follows :—

“If within a fortnight after service of a writ of summons and

warrant no appearance shall have been entered in the action, the solicitor for the plaintiff may file his statement of claim. And, if within a fortnight from the filing of the statement of claim, no appearance shall have been entered, the plaintiff's solicitor may, on bringing in his proofs, enter the action for trial. appear-  
ance in  
actions in  
rem.

“If when the action comes before the judge he is satisfied that the plaintiff's claim is well founded, he may pronounce for the claim with or without a reference to the registrar or the registrar assisted by merchants, and may at the same time order the property to be appraised and sold with or without previous notice, and the proceeds to be paid into Court, or may make such order in the premises as to him shall seem just.”

Rule 10 of the Judicature Rules having been repealed the old practice was revived and embodied in the preceding rules by an order issued from the registry in Feb. 1876. The practice is to enter the cause for hearing, when it will be set down in the list, and generally taken on the motion day of the week ; but, in some cases where there are exceptional circumstances, the cause may come before the judge on motion for judgment under O. xl., r. 1, and a decree will be made according to the claim on the writ without a statement of claim as required by the above rules (*The Juliana*, 35 L. T. N. S. 410) where there was a fund in Court, a previous action in regard to the same subject-matter had been allowed to go by default, and the last claim was for wages.

In the case of an action on a bottomry bond, the original bond must in all cases be brought into Court (*The Rowena*, 37 L. T. N. S. 366 ; 3 Asp. M. C. N. S. 406).

When foreign sailors are plaintiffs and a sum is demanded by way of *viaticum*, a certificate of their consul must be brought to the notice of the judge, stating that the plaintiffs are returning home at their own cost, before a decree for this special sum can be obtained (*The Raffaelluccia*, 37 L. T. N. S. 365 ; 3 Asp. M. C. N. S. 505).

The Court will generally also grant leave to bondholders to pay prior charges, as wages and other claims, and to

have a lien in respect thereof, so as to save expense of actions, on an affidavit showing the charges (*The Fair Haven*, L. R. 1 Ad. 67).

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### ORDER XV.

#### APPLICATION FOR ACCOUNT WHERE WRIT INDORSED UNDER ORDER III, RULE 8.

Applica-  
tion for  
account.

1. In default of appearance to a summons indorsed under Order III, Rule 8, and after appearance, unless the defendant, by affidavit or otherwise, satisfy the Court or a judge that there is some preliminary question to be tried, an order for the account claimed, with all directions now usual in the Court of Chancery in similar cases, shall be forthwith made.

2. An application for such order as mentioned in the last preceding rule shall be made by summons, and be supported by an affidavit filed on behalf of the plaintiff, stating concisely the grounds of his claim to an account. The application may be made at any time after the time for entering an appearance has expired.

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### ORDER XVI.

#### PARTIES.

Parties.

1. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person or persons who shall not be found entitled to relief, unless the Court in disposing of the costs of the action shall otherwise direct.

2. Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff or plaintiffs, the Court or a judge may, if satisfied that it has been so commenced through a *bond fide* mistake, and that it is necessary for the determination of the real

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matter in dispute so to do, order any other person or persons to be substituted or added as plaintiff or plaintiffs upon such terms as may seem just.

Where the bailee of a vessel brings an action and is successful, the Court will take precautions that the sum awarded shall not be paid out without reasonable security that the owners do not also bring an action, and that both parties consent to the appropriation of the sum awarded (*The Minna*, L. R. 2 Ad. 97). In such a case it would be advisable to join both bailees and owners under the first of the above rules.

The assignors of a cause of action where there is no lien may sue for the assignees even though the assignors' claim does not accrue, and even if their general property has vested in a trustee in bankruptcy (*The Wasp*, L. R. 1 Ad. 367; 2 Mar. L. C. O. S. 552).

Any number of persons having a common interest may be joined as plaintiffs: thus, several seamen may unite in a wages suit, and the owner of the ship and the owner of the cargo in an action for damages.

A charterer, being generally, *pro hac vice*, owner of the vessel, should be a party to an action for salvage instead of the actual owner (*The Scout*, L. R. 3 Ad. 512; 41 L. J. Ad. 42), and the representative of a foreigner lost at sea in an action of damage (*The Explorer*, L. R. 3 Ad. 289; 40 L. J. Ad. 41).

3. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

It will be obvious that this rule can apply only to an action *in personam*.

4. It shall not be necessary that every defendant to any action shall be interested as to all the relief thereby prayed for, or as to

every cause of action included therein ; but the Court or a judge may make such order as may appear just, to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in such action in which he may have no interest.

5. The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes.

6. Where in any action, whether founded upon contract or otherwise, the plaintiff is in doubt as to the person from whom he is entitled to redress, he may, in such manner as hereinafter mentioned, or as may be prescribed by any special order, join two or more defendants, to the intent that in such action the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties to the action.

Trustees  
and execu-  
tors.

7. Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the parties beneficially interested in the trust or estate, and shall be considered as representing such parties in the action; but the Court or a judge may, at any stage of the proceedings, order any of such parties to be made parties to the action, either in addition to or in lieu of the previously existing parties thereto.

Married  
women and  
infants.

8. Married women and infants may respectively sue as plaintiffs by their next friends, in the manner practised in the Court of Chancery before the passing of this Act; and infants may in like manner defend any action by their guardians appointed for that purpose. Married women may also, by the leave of the Court or a judge, sue or defend without their husbands and without a next friend, on giving such security (if any) for costs as the Court or a judge may require.

A guardian of an infant is appointed by an instrument called a proxy, which appointment must be accepted by an instrument in writing, and both documents must then be filed in the registry (*The Albert Crosby*, Lush. 44). This was usually the practice when an infant was a plaintiff, but r. 8 appears to have altered the former practice. A child en ventre sa mère can sue in actions of damage under 9 & 10 Vict. c. 93. (*The George & Richard*, L. R. 3 Ad. 466; 24 L. T. N. S. 717.)

9. Where there are numerous parties having the same interest in one action, one or more of such parties may sue or be sued, or may be authorized by the Court to defend in such action, on behalf or for the benefit of all parties so interested. Representative party.

10. Any two or more persons claiming or being liable as co-partners may sue or be sued in the name of their respective firms, if any; and any party to an action may in such case apply by summons to a judge for a statement of the names of the persons who are co-partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the judge may direct. Partners.

10a. Any person carrying on business in the name of a firm apparently consisting of more than one person, may be sued in the name of such firm.

13. No action shall be defeated by reason of the misjoinder of parties and the Court may in every action deal with the matter in controversy so far as regards the rights and interest of the parties actually before it. The Court or a judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court or a judge to be just, order that the name or names of any party or parties, whether as plaintiffs or as defendants, improperly joined, be struck out, and that the name or names of any party or parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the action, be added. No person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent thereto. All parties whose names are so added as defendants shall be served with a summons or notice in manner hereinafter mentioned, or in such manner as may be prescribed by any special order, and the proceedings as against them shall be deemed to have begun only on the service of such summons or notice. Misjoinder of parties.

This rule is useful in actions of possession. Thus, should parties not be before the Court as defendants, the plaintiff whilst obtaining possession of a ship may not have anyone by whom payment of costs may be made. In such a case the Court will order persons who have not appeared and who are interested in the subject-matter of the action to be made parties. This practice was adopted in *The Annandale*, L. R. 2 P. D., 179; 37 L. T. N. S. 364, and in

*The Native Pearl*, 37 L. T. N. S. 542; 3 Asp. M. C. N. S. 575, wherein a managing owner was joined as a defendant.

Striking  
out and  
adding  
parties.

14. Any application to add or strike out or substitute a plaintiff or defendant may be made to the Court or a judge at any time before trial, by motion or summons, or at the trial of the action in a summary manner.

15. Where a defendant is added, unless otherwise ordered by the Court or judge, the plaintiff shall file an amended copy of and sue out a writ of summons, and serve such new defendant with such writ or notice in lieu of service thereof, in the same manner as original defendants are served.

16. If a statement of claim has been delivered previously to such defendant being added, the same shall, unless otherwise ordered by the Court or judge, be amended in such manner as the making such new defendant a party shall render desirable, and a copy of such amended statement of claim shall be delivered to such new defendant at the time when he is served with the writ of summons or notice or afterwards, within four days after his appearance.

Claim by  
defendant  
against  
third  
parties.

17. Where a defendant is or claims to be entitled to contribution or indemnity or any other remedy or relief over against any other person, or where from any other cause it appears to the Court or a judge that a question in the action should be determined not only as between the plaintiff and defendant, but as between the plaintiff, defendant, and any other person, or between any or either of them, the Court or a judge may, on notice being given to such last-mentioned person, make such order as may be proper for having the question so determined.

See note to succeeding rule.

18. Where a defendant claims to be entitled to contribution, indemnity, or other remedy or relief over against any person not a party to the action, he may, by leave of the Court or a judge, issue a notice to that effect, stamped with the seal with which writs of summons are sealed. A copy of such notice shall be filed with the proper officer and served on such person according to the rules relating to the service of writs of summons. The notice shall state the nature and grounds of the claim, and shall, unless otherwise ordered by the Court or a judge, be served within the time limited for delivering his statement of defence. Such notice may be in the form or to the effect of the Form No. 1, in Appendix (B) hereto, with such variations as circumstances may require, and therewith shall be served a copy of the state-

ment of claim, or, if there be no statement of claim, then a copy of the writ of summons in the action.

The working of the third party rules has not proved satisfactory, and the difficulties in putting them into practice have been great. Their operation in questions of contract may be seen in the cases of *Benecke v. Frost*, 1 Q. B. D. 419; 45 L. J. Q. B. 693; *Swansea Shipping Co. v. Duncan*, 1 Q. B. D. 644; 45 L. J. Q. B. 638; *Bower v. Hartley*, 1 Q. B. D. 652; 46 L. J. Q. B. 126; *The Associated Home Co. v. Whichcord*, 47 L. J. Ch. 652.

As regards questions arising out of torts, the judgment of the Court of Appeal in *Horwell v. London General Omnibus Co.*, 2 Ex. D. 365; 46 L. J. Ex. D. 700, seems to have narrowed them exceedingly, since there is scarcely a case in which a defendant can have a claim over against a third party, which if good, would not be a valid defence, and so render any question of contribution quite unnecessary. Thus if ship A. brings an action against ship B. for damage by collision, and B. says that the collision was caused by negligent navigation on the part of C. which caused B. to collide with A., this is a good defence to A.'s action, and not a reason for bringing C. in as a third party. If B., however, were a ship in tow and C. the tug, B. would be responsible to A., and then might bring C. in as a third party. (See *The Carlsburn*, L. R. 5 P. D. 59; 41 L. T. N. S. 711.) Again, an action is brought by A. against B. for salvage, the necessity for such service having been caused by a collision between B. and C., B. might claim to be indemnified by C. for the amount of salvage. But it is now clearly established that the plaintiff must not be prejudiced by thus bringing in a third party, and if he is likely to be, the Court will refuse to allow this procedure to be used. As soon as the third party is brought in, an application under r. 21 should be made to the Court to give directions as to



the mode of trial, and the extent to which the parties are to be bound (*The Cartsburn, supra*).

19. When under Rule 17 of this Order it is made to appear to the Court or a judge at any time before or at the trial, that a question in the action should be determined, not only as between the plaintiff and defendant, but as between the plaintiff and the defendant and any other person, or between any or either of them, the Court or a judge, before or at the time of making the order for having such question determined, shall direct such notice to be given by the plaintiff at such time and to such person and in such manner as may be thought proper, and if made at the trial the judge may postpone such trial as he may think fit.

20. If a person not a party to the action, who is served as mentioned in Rule 18, desires to dispute the plaintiff's claim in the action as against the defendant on whose behalf the notice has been given, he must enter an appearance in the action within eight days from the service of the notice. In default of his so doing, he shall be deemed to admit the validity of the judgment obtained against such defendant, whether obtained by consent or otherwise. Provided always, that a person so served and failing to appear within the said period of eight days may apply to the Court or a judge for leave to appear, and such leave may be given upon such terms, if any, as the Court or a judge shall think fit.

21. If a person not a party to the action served under these rules appears pursuant to the notice, the party giving the notice may apply to the Court or a judge for directions as to the mode of having the question in the action determined; and the Court or judge, upon the hearing of such application, may, if it shall appear desirable so to do, give the person so served liberty to defend the action upon such terms as shall seem just, and may direct such pleadings to be delivered, or such amendments in any pleadings to be made, and generally may direct such proceedings to be taken, and give such directions, as to the Court or a judge shall appear proper for having the question most conveniently determined, and as to the mode and extent in or to which the person so served shall be bound or made liable by the decision of the question.

## ORDER XVII.

## JOINDER OF CAUSES OF ACTION.

1. Subject to the following rules, the plaintiff may unite in the same action and in the same statement of claim several causes of action; but, if it appear to the Court or a judge that any such causes of action cannot be conveniently tried or disposed of together, the Court or judge may order separate trials of any of such causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof.

3. Claims by a trustee in bankruptcy as such shall not, unless by leave of the Court or a judge, be joined with any claim by him in any other capacity.

4. Claims by or against husband and wife may be joined with claims by or against either of them separately.

5. Claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator.

6. Claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant.

7. The last three preceding rules shall be subject to Rule 1 of this Order, and to the rules hereinafter contained.

8. Any defendant alleging that the plaintiff has united in the same action several causes of action which cannot be conveniently disposed of in one action, may at any time apply to the Court or a judge for an order confining the action to such of the causes of action as may be conveniently disposed of in one proceeding.

9. If, on the hearing of such application as in the last preceding rule mentioned, it shall appear to the Court or a judge that the causes of action are such as cannot all be conveniently disposed of in one action, the Court or a judge may order any of such causes of action to be excluded, and may direct the statement of claim, or, if no statement of claim has been delivered, the copy of the writ of summons and the indorsement of claim on the writ of summons to be amended accordingly, and may make such order as to costs as may be just.

## ORDER XVIII.

ACTIONS BY AND AGAINST LUNATICS AND PERSONS OF  
UN SOUND MIND.

Action by  
lunatics,  
&c.

In all cases in which lunatics and persons of unsound mind not so found by inquisition might respectively before the passing of the Act have sued as plaintiffs or would have been liable to be sued as defendants in any action or suit, they may respectively sue as plaintiffs in any action by their committee or next friend in manner practised in the Court of Chancery before the passing of the said Act, and may in like manner defend any action by their committees or guardians appointed for that purpose.

## ORDER XIX.

## PLEADING GENERALLY.

Pleadings:  
they  
must be  
brief and  
contain  
material  
facts only.

1. The following rules of pleading shall be substituted for those heretofore used in the High Court of Chancery and in the Courts of Common Law, Admiralty, and Probate.

2. Unless the defendant in an action at the time of his appearance shall state that he does not require the delivery of a statement of complaint, the plaintiff shall within such time and in such manner as hereinafter prescribed, deliver to the defendant after his appearance a statement of his complaint and of the relief or remedy to which he claims to be entitled. The defendant shall within such time and in such manner as hereinafter prescribed deliver to the plaintiff a statement of his defence, set-off, or counter-claim (if any), and the plaintiff shall in like manner deliver a statement of his reply (if any) to such defence, set-off, or counterclaim. *Such statements shall be as brief as the nature of the case will admit*, and the Court in adjusting the costs of the action shall inquire at the instance of any party into any unnecessary prolixity, and order the costs occasioned by such prolixity to be borne by the party chargeable with the same.

These and the following rules apply to petitions on protest and against the report of the registrar as well as to ordinary pleadings (J. A., 1873, s. 100, and O. i., r. 3).

The briefness must necessarily depend on the circumstances of each particular case, but it was pointed out under the old Admiralty procedure, upon which these rules are modelled, that not every material fact need be pleaded, but such only as if proved or admitted would establish the plaintiff's (or defendant's) case (*The West of England*, 1 L. R. Ad. 307). On the other hand, every material fact in which the parties intend to rely must,—it will be seen under r. 4,—be pleaded. And it was held (under the old practice) that a fact was not to be implied from a general allegation, but to be distinctly stated. This decision is still applicable (*The Marpesia*, L. R. 4 P. C. 212; 26 L. T. N. S. 333).

3. A defendant in an action may set off, or set up by way of counter-claim against the claims of the plaintiff any right or claim, whether such set-off or counter-claim *sound in damages or not*, and such set-off or counter-claim shall have the same effect as a statement of claim in a cross action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross-claim. But the Court or a judge may, on the application of the plaintiff before trial, if in the opinion of the Court or judge such set-off or counter-claim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof.

By this rule cross-actions, such as those for damage by collision are no longer necessary, for any cross-claim or set-off which a defendant may have can be pleaded by way of counter-claim so long as it can be conveniently disposed of in the pending action. Thus, the limitation of liability under M. S. Act, 1862, s. 54, can be claimed in this manner (e.g. *The Clutha*, 45 L. J. Ad. 108; 35 L. T. N. S. 36). Though it has been held that it may be properly pleaded as a partial ground of defence (*Wahlberg v. Young*, 45 L. J. C. P. 783); see further on limitation of liability, *ante*, pp. 54, 55. It has been laid down as a principle that "the set-off claimed must be connected with the original cause of action" (*Padwick v. Scott*, 2 Ch. D. 736; 45 L. J.

Counter-claims and set-off.

For Limitation of liability.

Ch. 350). As to striking out counter-claims, see *post*, O. xxii., r. 9; but, even with this limitation, the Admiralty jurisdiction in this matter is much enlarged, since it was formerly more or less confined to actions for wages (see *The Don Francisco*, Lush. 468; 5 L. T. N. S. 460).

Evidence  
not to be  
pleaded.

4. Every pleading shall contain as concisely as may be a statement of the material facts on which the party pleading relies, but not the evidence by which they are to be proved, such statement being divided into paragraphs numbered consecutively, and each paragraph containing as nearly as may be a separate allegation. Dates, sums, and numbers shall be expressed in figures and not in words. Signature of counsel shall not be necessary. Forms similar to those in Appendix (C) hereto may be used.

As to some of the rules of pleading, see *ante*, r. 2.

5. Every pleading which shall contain less than ten folios of 72 words each (every figure being counted as one word) may be either printed or written, or partly printed and partly written, and every other pleading, not being a petition or summons, shall be printed.

Delivery of  
pleadings.

6. Every pleading or other document required to be delivered to a party, or between parties, shall be delivered in the manner now in use to the solicitor of every party who appears by a solicitor, or to the party if he does not appear by a solicitor; but, if no appearance has been entered for any party, then such pleading or document shall be delivered by being filed with the proper officer.

This rule supersedes the old practice of filing pleadings in the registry, except in cases of objection to the registrar's report.

Date of  
delivery of  
pleadings.

7. Every pleading in an action shall be delivered between parties, and shall be marked on the face with the date of the day on which it is delivered, and with the reference to the letter and number of the action, the division to which and the judge (if any) to whom the action is assigned, the title of the action, the description of the pleading, and the name and place of business of the solicitor and agent, if any, delivering the same, or the name and address of the party delivering the same if he does not act by a solicitor.

Statement  
of relief  
claimed.

8. Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and may also ask for general relief. And the same rule shall apply to any counter-claim made or relief claimed by the defendant in his statement of

defence. If the plaintiff's claim be for discovery only, the statement of claim shall show it.

9. Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinctly. And the same rule shall apply where the defendant relies upon several distinct grounds of defence, set-off, or counter-claim founded upon separate and distinct facts.

10. Where any defendant seeks to rely upon any facts as supporting a right of set-off or counter-claim, he shall in his statement of defence state specifically that he does so by way of set-off or counter-claim. **Set-off.**

11. If either party wishes to deny the right of any other party to claim as executor or as trustee, whether in bankruptcy or otherwise, or in any representative or other alleged capacity, or the alleged constitution of any partnership firm, he shall deny the same specifically.

17. Every allegation of fact in any pleading in an action, not being a petition or summons, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against an infant, lunatic, or person of unsound mind not so found by inquisition.<sup>1</sup> **Admission in pleadings.**

It was decided under the old practice that an admission of law could not be made in pleadings, and r. 17 by implication supports this decision (*The Peerless*, Lush. 103; 13 Moo. P. C. 484).

18. Each party in any pleading, not being a petition or summons, must allege all such facts not appearing in the previous pleadings as he means to rely on, and must raise all such grounds of defence or reply, as the case may be, as if not raised on the pleadings would be likely to take the opposite party by surprise, or would raise new issues of fact not arising out of the pleadings, as, for instance, fraud, or that any claim has been barred by the Statute of Limitations, or has been released. **Allegation of material facts.**

Before these rules the defence of non-communication with owners to an action on a bottomry bond was held to be one which should be specially pleaded, and it clearly should be still set out in the defence (see *The Olivier*, Lush. 484).

<sup>1</sup> The five preceding rules are omitted, as inapplicable to Admiralty actions.

19. No pleading, not being a petition or summons, shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

Rule 19 would not, according to the old practice, apply to petitions on protest or against the registrar's report, and it would not be considered now as applicable to these cases.

Denial of facts.

20. It shall not be sufficient for a defendant in his defence to deny generally the facts alleged by the statement of claim, or for a plaintiff in his reply to deny generally the facts alleged in a defence by way of counter-claim, but each party must deal specifically with each allegation of fact of which he does not admit the truth.

21. Subject to the last preceding rule, the plaintiff by his reply may join issue upon the defence, and each party in his pleading, if any, subsequent to reply, may join issue upon the previous pleading. Such joinder of issue shall operate as a denial of every material allegation of fact in the pleading upon which issue is joined, but it may except any facts which the party may be willing to admit, and shall then operate as a denial of the facts not so admitted.

22. When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he must not do so evasively, but answer the point of substance. Thus, if it be alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And so, when a matter of fact is alleged with divers circumstances, it shall not be sufficient to deny it as alleged along with those circumstances, but a fair and substantial answer must be given.

Allegation of contract.

23. When a contract is alleged in any pleading, a bare denial of the contract by the opposite party shall be construed only as a denial of the making of the contract in fact, and not of its legality or its sufficiency in law, whether with reference to the Statute of Frauds or otherwise.

Documents.

24. Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.

Malice, &c.

25. Wherever it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of any person, it shall be

sufficient to allege the same as a fact, without setting out the circumstances from which the same is to be inferred.

26. Wherever it is material to allege notice to any person of any fact, matter, or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice be material.

27. Wherever any contract or any relation between any persons does not arise from an express agreement, but is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations, or circumstances without setting them out in detail. And, if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative. Implied contracts.

28. Neither party need in any pleading allege any matter of fact which the law presumes in his favour, or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied. Presumption of fact.

[*E.g.* Consideration for a bill of exchange where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim.]

30. In actions for damage by collisions between vessels, unless the Court or a judge shall otherwise order, each solicitor shall, before any pleading is delivered, file with the proper officer a document to be called a Preliminary Act, which shall be sealed up and shall not be opened until ordered by the Court or a judge, and which shall contain a statement of the following particulars:— Preliminary Acts.

(a.) The names of the vessels which came into collision and the names of their masters.

(b.) The time of the collision.

(c.) The place of the collision.

(d.) The direction of the wind.

(e.) The state of the weather.

(f.) The state and force of the tide.

(g.) The course and speed of the vessel when the other was first seen.

(h.) The lights, if any, carried by her.

(i.) The distance and bearing of the other vessel when first seen.

(k.) The lights, if any, of the other vessel which were first seen.

(l.) Whether any lights of the other vessel, other than those first seen, came into view before the collision.

(m.) What measures were taken, and when, to avoid the collision.

(n.) The parts of each vessel which first came into contact.



If both solicitors consent, the Court or judge may order the Preliminary Acts to be opened and the evidence to be taken thereon without its being necessary to deliver any pleadings.

The object of the Preliminary Act is to have the leading circumstances of the collision placed in a formal documentary shape whilst fresh in the recollection of the parties; any application, therefore, to amend the Act must be made at once, and no amendment will be allowed at the hearing (*The Vortigern*, Swa. 518; *The Frankland*, L. R. 3 Ad. 511; 41 L. J. Ad. 3).

And Preliminary Acts are only required in actions by one ship against another for damage caused by collision, and not where an action is brought by some one other than the owner of the injured vessel, as, by the owner of cargo laden on board a ship, against that ship, for damage caused by collision with another vessel (*The John Boyne*, 36 L. T. N. S. 29; 25 W. R. 756).

A party should not, at the hearing, contradict his Preliminary Act (*The Vortigern*, *supra*). And an order is in all cases necessary if it is desired to open the Preliminary Acts.

The case is very seldom tried on the Preliminary Act only.

Pleadings  
in district  
registry.

29. Where an action proceeds in a district registry, all pleadings and other documents required to be filed shall be filed in the district registry.

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## ORDER XX.

### PLEADING MATTERS ARISING PENDING THE ACTION.

Pleading  
matters  
which arise  
pending  
hearing

1. Any ground of defence which has arisen after action brought, but before the defendant has delivered his statement of defence, and before the time limited for his doing so has expired, may be pleaded by the defendant in his statement of defence, either alone or together with other grounds of defence. And if, after a statement of defence

has been delivered, any ground of defence arises to any set-off or counter-claim alleged therein by the defendant, it may be pleaded by the plaintiff in his reply, either alone or together with any other ground of reply.

2. Where any ground of defence arises after the defendant has delivered a statement of defence, or after the time limited for his doing so has expired, the defendant may, and where any ground of defence to any set-off or counter-claim arises after reply, or after the time limited for delivering a reply has expired, the plaintiff may, within eight days after such ground of defence has arisen, and by leave of the Court or a judge, deliver a further defence or further reply, as the case may be, setting forth the same.

3. Whenever any defendant, in his statement of defence, or in any further statement of defence as in the last rule mentioned, alleges any ground of defence which has arisen after the commencement of the action, the plaintiff may deliver a confession of such defence, which confession may be in the Form No. 2 in Appendix (B.) hereto, with such variations as circumstances may require, and he may thereupon sign judgment for his costs up to the time of the pleading of such defence, unless the Court or a judge shall, either before or after the delivery of such confession, otherwise order.

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## ORDER XXI.

### STATEMENT OF CLAIM.

1. Subject to Rules 2 and 3 of this Order, the delivery of statements of claim shall be regulated as follows :—

Delivery of  
statement  
of claim.

(a.) If the defendant shall not state that he does not require the delivery of a statement of claim, the plaintiff shall, unless otherwise ordered by the Court or a judge, deliver it within six weeks from the time of the defendant's entering his appearance.

(b.) The plaintiff may, if he think fit, at any time after the issue of the writ of summons, deliver a statement of claim with the writ of summons or notice in lieu of writ of summons, or at any time afterwards, either before or after appearance, and although the defendant may have appeared and stated that he does not require a statement of claim : Provided that in no case where a defendant has appeared shall a statement be delivered more than six weeks after the appearance has been entered, unless otherwise ordered by the Court or a judge.

(c.) Where a plaintiff delivers a statement of claim without being required to do so, the Court or a judge may make such order as to the costs occasioned thereby as shall seem just, if it appears that the delivery of a statement of claim was unnecessary or improper.

As to enlarging time, O. lvii., r. 6.

Time for  
delivery of  
statement  
of claim  
in actions  
*in rem*.  
Where  
writ is  
specially  
indorsed.

3. In Admiralty actions *in rem*, the plaintiff shall, within twelve days from the appearance of the defendant, deliver his statement of claim.

4. Where the writ is specially indorsed, and the defendant has not dispensed with a statement of claim, it shall be sufficient for the plaintiff to deliver as his statement of claim a notice to the effect that his claim is that which appears by the indorsement upon the writ, unless the Court or a judge shall order him to deliver a further statement. Such notice may be either written or printed, or partly written and partly printed, and may be in the Form No. 3 in Appendix (B.) hereto, and shall be marked on the face in the same manner as is required in the case of an ordinary statement of claim. And when the plaintiff is ordered to deliver such further statement, it shall be delivered within such time as by such order shall be directed; and, if no time be so limited, then within the time prescribed by Rule 1 of this Order.

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## ORDER XXII.

### DEFENCE

Delivery of  
statement  
of defence.

1. Where a statement of claim is delivered to a defendant he shall deliver his defence within eight days from the delivery of the statement of claim, or from the time limited for appearance, whichever shall be last, unless such time is extended by the Court or a judge.

As to demurrers, see O. xxviii., r. 3. A demurrer is a "defence" (*Hodges v. Hodges*, 2 Ch. D. 112; 24 W. R. 293).

2. A defendant who has appeared in an action and stated that he does not require the delivery of a statement of claim, and to whom a statement of claim is not delivered, may deliver a defence at any time within eight days after his appearance, unless such time is extended by the Court or a judge.

4. Where the Court or a judge shall be of opinion that any allegations of fact denied or not admitted by the defence ought to have been admitted, the Court may make such order as shall be just with respect to any extra costs occasioned by their having been denied or not admitted. Admission of denied facts.

5. Where a defendant by his defence sets up any counter-claim which raises questions between himself and the plaintiff along with any other person or persons, he shall add to the title of his defence a further title similar to the title in a statement of complaint, setting forth the names of all the persons who, if such counter-claim were to be enforced by cross-action, would be defendants to such cross-action, and shall deliver his defence to such of them as are parties to the action within the period within which he is required to deliver it to the plaintiff. Raising questions against third parties.

6. Where any such person as in the last preceding rule mentioned is not a party to the action, he shall be summoned to appear by being served with a copy of the defence; and such service shall be regulated by the same rules as are hereinbefore contained with respect to the service of a writ of summons and every defence so served shall be indorsed in the Form No. 4 in Appendix (B.) hereto, or to the like effect.

7. Any person not a defendant to the action, who is served with a defence and counter-claim as aforesaid, must appear thereto as if he had been served with a writ of summons to appear in an action. Appearance of third parties.

8. Any person named in a defence as a party to a counter-claim thereby made may deliver a reply within the time within which he might deliver a defence if it were a statement of claim.

See O. xvi., rr. 20 and 21, and r. 1 of this Order. The time is eight days.

Rule 8 does not allow a third party to deliver a counter-claim (*Street v. Gover*, L. R. 2 Q. B. 498; 46 L. J. Q. B. 582).

9. Where a defendant by his statement of defence sets up a counter-claim, if the plaintiff or any other person named in manner aforesaid as party to such counter-claim contends that the claim thereby raised ought not to be disposed of by way of counter-claim, but in an independent action, he may, at any time before reply, apply to the Court or a judge for an order that such counter-claim may be excluded, and the Court or a judge may, on the hearing of such application, make such order as shall be just. Exclusion of counter-claims.

See O. xix., r. 3.

10. Where in any action a set-off or counter-claim is established as a defence against the plaintiff's claim, the Court may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

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## ORDER XXIII.

### DISCONTINUANCE.

Discon-  
tinuance.

1. The plaintiff may, at any time before receipt of the defendant's statement of defence, or after the receipt thereof before taking any other proceeding in the action (save any interlocutory application), by notice in writing, wholly discontinue his action or withdraw any part or parts of his alleged cause of complaint; and thereupon he shall pay the defendant's costs of the action, or, if the action be not wholly discontinued, the defendant's costs occasioned by the matter so withdrawn. Such costs shall be taxed, and such discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action. Save as in this rule otherwise provided, it shall not be competent for the plaintiff to withdraw the record or discontinue the action without leave of the Court or a judge, but the Court or a judge may, before or at or after the hearing or trial, upon such terms as to costs, and as to any other action, and otherwise, as may seem fit, order the action to be discontinued, or any part of the alleged cause of complaint to be struck out. The Court or a judge may, in like manner, and with the like discretion as to terms, upon the application of a defendant, order the whole or any part of his alleged grounds of defence or counter-claim to be withdrawn or struck out; but it shall not be competent to a defendant to withdraw his defence, or any part thereof, without such leave,

The order as to costs in the first part of this rule refers to all the costs incurred, and is absolute (*The St. Olaf*, 2 P. D. 113; 36 L. T. N. S. 30). And, when money has been paid into Court in lieu of bail, and the *res* has been arrested without due cause, if the plaintiff discontinues his action he will be ordered to pay interest on the

sum paid into Court, in addition to costs (*The Western Ocean*, L. R. 3 Ad. 40). An ordinary letter from a solicitor, stating that he is instructed not to proceed further with an action, is a sufficient notice of discontinuance: *The Pommerania*, L. R. 4 P. D. 195; 48 L. J. Ad. 55.

2. Where a cause has been entered for trial it may be withdrawn by either plaintiff or defendant, upon producing to the proper officer a consent in writing signed by the parties.

2a. A defendant may sign judgment for the costs of an action if it is wholly discontinued, or for the costs occasioned by the matter withdrawn if the action be not wholly discontinued.

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#### ORDER XXIV.

##### REPLY AND SUBSEQUENT PLEADINGS.

1. A plaintiff shall deliver his reply, if any, within three weeks after the defence or the last of the defences shall have been delivered, unless the time shall be extended by the Court or a judge.

2. No pleading subsequent to reply other than a joinder of issue shall be pleaded without leave of the Court or a judge, and then upon such terms as the Court or judge shall think fit.

3. Subject to the last preceding rule, every pleading subsequent to reply shall be delivered within four days after the delivery of the previous pleading, unless the time shall be extended by the Court or a judge.

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#### ORDER XXV.

##### CLOSE OF PLEADINGS.

As soon as either party has joined issue upon any pleading of the opposite party simply without adding any further or other pleading thereto, the pleadings as between such parties shall be deemed to be closed.

## ORDER XXVI.

## ISSUES.

**Issues.** Where in any action it appears to a judge that the statement of claim or defence or reply does not sufficiently define the issues of fact in dispute between the parties, he may direct the parties to prepare issues, and such issues shall, if the parties differ, be settled by the judge.

## ORDER XXVII.

## AMENDMENT OF PLEADINGS.

**Amend-  
ment of  
pleadings.** 1. The Court or a judge may, at any stage of the proceedings, allow either party to alter his statement of claim or defence or reply, or may order to be struck out or amended any matter in such statements respectively which may be scandalous, or which may tend to prejudice, embarrass, or delay the fair trial of the action; and all such amendments shall be made as may be necessary for the purpose of determining the real questions or question in controversy between the parties.

**Times.** 2. The plaintiff may, without any leave, amend his statement of claim once at any time before the expiration of the time limited for reply and before replying, or, where no defence is delivered, at any time before the expiration of four weeks from the appearance of the defendant who shall have last appeared.

3. A defendant who has set up in his defence any set-off or counter-claim may, without any leave, amend such set-off or counter-claim at any time before the expiration of the time allowed him for pleading to the reply, and before pleading thereto, or, in case there be no reply, then at any time before the expiration of twenty-eight days from the filing of his defence.

4. Where any party has amended his pleading under either of the last two preceding rules, the opposite party may, within eight days after the delivery to him of the amended pleading, apply to the Court or a judge to disallow the amendment, or any part thereof, and the Court or judge may, if satisfied that the justice of the case requires it, disallow the same, or allow it subject to such terms as to costs or otherwise as may seem just.

5. Where any party has amended his pleading under Rule 2 or 3 of this Order, the other party may apply to the Court or a judge for leave to plead or amend his former pleading within such time and upon such terms as may seem just.

6. In all cases not provided for by the preceding rules of this order, application for leave to amend any pleading may be made by either party to the Court or a judge in chambers, or to the judge at the trial of the action, and such amendment may be allowed upon such terms as to costs or otherwise as may seem just.

7. If a party who has obtained an order for leave to amend a pleading delivered by him does not amend the same within the time limited for that purpose by the order, or if no time is thereby limited, then within fourteen days from the date of the order, such order to amend shall, on the expiration of such limited time as aforesaid, or of such fourteen days, as the case may be, become *ipso facto* void, unless the time is extended by the Court or a judge.

8. A pleading may be amended by written alterations in the Method of pleading which has been delivered, and by additions on paper to be interleaved therewith if necessary, unless the amendments require the insertion of more than 144 words in any one place, or are so numerous or of such a nature that the making them in writing would render the pleading difficult or inconvenient to read, in either of which cases the amendment must be made by delivering a print of the pleading as amended.

9. Whenever any pleading is amended, such pleading when amended shall be marked with the date of the order, if any, under which the same is so amended, and of the day on which such amendment is made, in manner following, viz : " Amended  
day of "

10. Whenever a pleading is amended, such amended pleading shall be delivered to the opposite party within the time allowed for amending the same.

11. The Court or a judge may, at any stage of the proceedings, allow the plaintiff to amend the writ of summons in such manner, and on such terms, as may seem just.

See as to amendments generally of writ of summons, note to O. ii., r. 2. The amended writ should be served as if it were an original writ (*The Cassiopeia*, 4 P. D. 188; 48 L. J. Ad. D. 39).

The Court has power to order a pleading to be partially amended, or to be wholly struck out, according as it thinks

Decisions  
as to  
amend.



and upon such terms as to the Court shall seem right for allowing the demurring party to raise by pleading any case he may be desirous to set up in opposition to the matter demurred to.

13. A demurrer shall be entered for argument by delivering to the proper officer a memorandum of entry in the Form No. 29 in Appendix (C).

The procedure as to demurrers is fully set out in the above rules. When the facts alleged in the pleadings show no cause of action or ground of defence in law, it is well to demur. But, if one part of a pleading is demurrable and another part is good in law, and raises a question of fact which will ultimately have to be decided irrespective of the demurrer, then it is scarcely advisable to demur. If the case can be decided by demurrer as first mentioned, the Court will order the hearing to be postponed, that the point may be properly raised by demurrer before the question of fact is gone into (*The Horlock*, L. R. 2 P. D. 243; 36 L. T. N. S. 622). Demurrers should be to the merits of the action, and not on subsidiary points (*The Sir Charles Napier*, L. R. 5 P. D. 73; 49 L. J. Ad. D. 23).

The plaintiff and defendant should each deliver their points for argument,—that is, the legal grounds on which they respectively rely,—to the registry, for the use of the Court at the hearing (*The Anna*, L. R. 1 P. D. 253 (255); 45 L. J. Ad. 98).

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## ORDER XXIX.

### DEFAULT OF PLEADING.

**Default of pleading.** 1. If the plaintiff, being bound to deliver a statement of claim, does not deliver the same within the time allowed for that purpose, the defendant may at the expiration of that time apply to the Court or a judge to dismiss the action with costs, for want of prosecution; and on the hearing of such application the Court or judge may, if no statement of claim have been delivered, order the action to be dismissed accordingly, or may make such other order on such terms as to the Court or judge shall seem just.

2. If the plaintiff's claim be only for a debt or liquidated demand, and the defendant does not, within the time allowed for that purpose, deliver a defence or demurrer, the plaintiff may at the expiration of such time enter final judgment for the amount claimed, with costs. When liquidated demand.

3. When in any such action as in the last preceding rule mentioned there are several defendants, if one of them make default as mentioned in the last preceding rule, the plaintiff may enter final judgment against the defendant so making default, and issue execution upon such judgment, without prejudice to his right to proceed with his action against the other defendants. Several defendants.

These rules do not apply to an action *in rem* (*The Sfactoria*, L. R. 2 P. D. 3; 35 L. T. N. S. 431). For the procedure in such actions, see *post*, rr. 10 and 11.

10. In all other actions than those in the preceding rules of this order mentioned, if the defendant make default in delivering a defence or demurrer, the plaintiff may set down the action on motion for judgment, and such judgment shall be given as upon the statement of claim the Court shall consider the plaintiff to be entitled to. Proceedings in default of pleading in action *in rem*.

11. Where, in any such action as mentioned in the last preceding rule, there are several defendants, then, if one of such defendants make such default as aforesaid, the plaintiff may either set down the action at once on motion for judgment against the defendant so making default, or may set it down against him at the time when it is entered for trial or set down on motion for judgment against the other defendants.

The judge of the Admiralty Division decided (*The Sfactoria*, L. R. 2 P. D. 3; 35 L. T. N. S. 431) that Rule 2 of this Order does not apply to an Admiralty action *in rem*, where there is a claim for a liquidated sum. It would appear, therefore, that in an action *in rem*, when an appearance has been entered, but default made in delivering a defence, in practice proofs should be brought into the registry, and the cause should be set down for hearing; thus adopting the same procedure as under O. xiii. (r. 10, substituted rule), or that the Court should be prayed for a decree on motion according to the allegations in the

statement of claim, under O. xl., r. 1, the judge under O. xxxvii., r. 1, having previously on application allowed the evidence to be taken on affidavit. Salvage actions have been tried when the defendant has made default in delivering a defence by the plaintiffs proving the main facts of the case by a single witness.

Non-delivery of reply or demurrer.

12. If the plaintiff does not deliver a reply or demurrer, or any party does not deliver any subsequent pleading, or a demurrer, within the period allowed for that purpose, the pleadings shall be deemed to be closed at the expiration of that period, and the statements of fact in the pleading last delivered shall be deemed to be admitted.

Application for judgment.

13. In any case in which issues arise in an action other than between plaintiff and defendant, if any party to any such issue makes default in delivering any pleading, the opposite party may apply to the Court or a judge for such judgment, if any, as upon the pleadings he may appear to be entitled to. And the Court may order judgment to be entered accordingly, or may make such other order as may be necessary to do complete justice between the parties.

Judgment by default.

14. Any judgment by default, whether under this order or under any other of these rules, may be set aside by the Court or a judge, upon such terms as to costs or otherwise as such Court or judge may think fit.

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## ORDER XXX.

### PAYMENT INTO COURT IN SATISFACTION.

Payment into Court in satisfaction of claim.

1. Where any action is brought to recover a debt or damages, any defendant may at any time after service of the writ, and before or at the time of delivering his defence, or by leave of the Court or a judge at any later time, pay into Court a sum of money by way of satisfaction or amends. Payment into Court shall be pleaded in the defence, and the claim or cause of action in respect of which such payment shall be made shall be specified therein.

2. Such sum of money shall be paid to the proper officer, who shall give a receipt for the same. If such payment be made before delivering his defence, the defendant shall thereupon serve upon the plaintiff a notice that he has paid in such money, and in respect of what claim, in the Form No. 5 in Appendix (B.)<sup>1</sup> hereto.

<sup>1</sup> App. IV., p. 441.

3. Money paid into Court as aforesaid may, unless otherwise ordered by a judge, be paid out to the plaintiff, or to his solicitor on the written authority of the plaintiff. No affidavit shall be necessary to verify the plaintiff's signature to such written authority unless specially required by the officer of the Court.

4. The plaintiff, if payment into Court is made before delivering a defence, may within four days after receipt of notice of such payment, or if such statement is first stated in a defence delivered then, may, before reply, accept the same in satisfaction of the causes of action in respect of which it is paid in ; in which case he shall give notice to the defendant in the Form No. 6 in Appendix (B.)<sup>1</sup> hereto, and shall be at liberty, in case the sum paid in is accepted in satisfaction of the entire cause of action, to tax his costs, and, in case of non-payment within forty-eight hours, to sign judgment for his costs so taxed.

The practice of tendering a certain sum in satisfaction of Tender. the plaintiff's claim in actions for salvage has long been in use in the Court of Admiralty; and even if there are two plaintiffs who are bringing separate actions, the defendant may make a tender of a single sum in respect of both actions, if it is very difficult for him to ascertain the value of the services rendered by each. (*The Jacob Landstrom*, L. R. 4 P. D. 191 ; 4 Asp. M. C. N. S. 581.) Notice of such tender must be served on the solicitor's for each plaintiff. For mere payment of money in satisfaction the practice formulated by the above rule might be employed, but the original Admiralty practice as to tenders is still in use. The solicitor of the defendant obtains a receivable order at the registry, which authorizes him to pay the sum he proposes to tender into the Bank of England to the account of the registrar. This order and the money having been left at the bank, a receipt for such sum is received there, a copy of which, together with a notice that the money has been paid into the bank and is tendered to the plaintiff, should be served on his solicitor. Such notice should include an offer to pay costs (as to costs of tender generally, see *post*, Order LV.) up to the date of tender, or it should state that the tender relates to the claim only, and give reasons why

<sup>1</sup> App. IV., p. 442.

costs are not also tendered, and refer the question concerning them to the Court (*The Hickman*, L. R. 3 Ad. 15 ; 39 L. J. Ad. 7 ; *The Thracian*, L. R. 3 Ad. 504 ; 1 Asp. M. C. N. S. 207). For Form of Tender, see App. V. The sum tendered will not, however, be paid out until the conclusion of the suit (*The Annie Childs*, Lush. 509), so that the practice as to a tender differs in this respect from an ordinary payment into Court ; as to which see r. 3, *ante*. A tender should be pleaded by the defendant in his defence. On an appeal from the Cinque Ports Commissioners, the defendant may tender a sum, which must be refused or accepted by the plaintiff (*The Annette*, L. R. 4 Ad. 9 ; 42 L. J. Ad. 13).

As to costs, see *post*, O. lv., Costs.

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## ORDER XXXI.

### DISCOVERY AND INSPECTION.

**Discovery.**  
Time for  
delivering  
interrogations.

1. The plaintiff may, at the time of delivering his statement of claim, or at any subsequent time not later than the close of the pleadings, and a defendant may, at the time of delivering his defence, or at any subsequent time not later than the close of the pleadings, without any order for that purpose, and either party may at any time, by leave of the Court or a judge, deliver interrogatories in writing for the examination of the opposite party or parties, or any one or more of such parties, with a note at the foot thereof, stating which of such interrogatories each of such persons is required to answer : Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose.

Rule 1 of this Order regulates the time at which interrogatories should be delivered. It has been laid down that as a general rule the plaintiff ought not to deliver his interrogatories before the delivery by the defendant of the statement of defence (*Mercier v. Cotton*, 1 Q. B. D. 442 ; 46 L. J. Q. B. 184) ; nor the defendant administer his interrogatories before he has delivered his statement of defence (*Disney v. Longbourne*, L. R. 2 Ch. D. 774 ; 45 L. J. Ch. 532). If very strong reasons were given, interro-

gatories might be allowed at an earlier period than the above, as in *The Murillo*, 28 L. T. N. S. 374; 1 Asp. M. C. N. S. 579, when the defendant appeared, stating he was "improperly sued as one of the owners of the ship."

2. The Court in adjusting the costs of the action shall at the instance of any party inquire or cause inquiry to be made into the propriety of exhibiting such interrogatories; and, if it is the opinion of the taxing master of the Court or judge that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be borne by the party in fault.

3. Interrogatories may be in the Form No. 7 in Appendix (B.) hereto, with such variations as circumstances may require.

See App. IV.; and as to costs, see further, App. II., p. 373.

4. If any party to an action be a body corporate or a joint stock Corporation, whether incorporated or not, or any other body of persons empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply at chambers for an order allowing him to deliver interrogatories to any member or officer of such corporation, company, or body, and an order may be made accordingly.

5. Any objection to answering any one or more of several interrogatories, on the ground that it or they is or are scandalous or irrelevant, or not *bond fide* for the purposes of the action, or that the matters inquired into are not sufficiently material at that stage of the action, or on any other ground, may be taken in the affidavit in answer. All applications to set aside the interrogatories, on the ground that they have been exhibited unreasonably or vexatiously, or to strike out any interrogatory or interrogatories, on the ground that it or they is or are scandalous, may be made at chambers within four days after service of the interrogatories.

By the rules of November, 1878, this rule replaced the former one. It regulates the manner of interrogating, and points out the reasons for which an interrogatory may be struck out. It has been laid down as a principle of practice that interrogatories ought to be such as tend *bond fide* to support the case of the interrogator and to favour a

complete inquiry into the truth of the issue which is before the Court (*The Mary or Alexandria*, L. R. 2 Ad. 312; 18 L. T. N. S. 891; see also *Benbow v. Low*, L. R. 16 Ch. D. 93; 50 L. J. Ch. D. (C.A.) 35). Among interrogatories which are objectionable, it has been held that those the answers to which would tend to render the answerer liable to criminal proceedings must be included (*The Mary or Alexandria, supra*), also those which seek to discover on what evidence the opposite side will rely (*The Commissioners of Sewers v. Glass*, L. R. 15 Eq. 302; 42 L. J. Ch. 345). Interrogatories have been allowed in a collision action, even though the information sought would mostly be found in the preliminary Acts (*The Radnorshire*, L. R. 5 P. D. 172; 49 L. J. Ad. D. 48). Interrogatories, however, are seldom required in ordinary Admiralty actions.

**Answers.**

6. Interrogatories shall be answered by affidavit, to be filed within ten days, or within such other time as a judge may allow.

7. An affidavit in answer to interrogatories shall, unless otherwise ordered by a judge, if exceeding ten folios, be printed, and may be in the Form No. 8 in Appendix (B.) hereto, with such variations as circumstances may require.

8. Rescinded.

9. No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the Court or a judge on motion or summons.

10. If any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court or a judge for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer or answer further either by affidavit or by *vivâ voce* examination, as the judge may direct.

A person interrogated must answer according to the best of his knowledge, belief, and information. If he is unable to answer a question he must say so with particularity, and that will be a sufficient answer (*The Minnehaha*, L. R. 3 Ad. 148 (152); 23 L. T. N. S. 747), otherwise a further or better answer will be required of him.

As to the use of these answers as evidence at the hearing, see *post*, r. 23.

11. It shall be lawful for the Court or a judge at any time during the pendency therein of any action or proceeding, to order the production by any party thereto, upon oath, of such of the documents in his possession or power relating to any matter in question in such action or proceeding, as the Court or judge shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just. Production of documents.

12. Any party may, without filing any affidavit, apply to a judge for an order directing any other party to the action to make discovery on oath of the documents which are or have been in his possession or power relating to any matter in question in the action.

These two rules enable a party to obtain the production of documents relating to the action, or to discover first of all what documents the other party to the action may possess. Having regard to J. A. 1873, s. 25, sub-s. 11, the rules of equity must govern the practice in this matter. Every document asked for must be produced, unless it is protected from being seen on the ground of privilege (*Bustros v. White*, 1 Q. B. D. 422; 45 L. J. Q. B. 642). And the right to discovery extends to every document which may throw light on the case (*Hutchinson v. Glover*, 1 Q. B. D. 138; 45 L. J. Q. B. 120, where terms of a compromise of an action of collision were ordered to be inspected). But reports of surveys held solely for the purpose of the action are privileged (*The Theodore Korner*, L. R. 3 P. D. 112; 47 L. J. Ad. D. 85); but not letters which would disclose trade secrets (*The Don Francisco*, Lush. 468).

In an action against the Queen's ships, the Court will not order the commander's reports to the Admiralty to be produced (*H. M. S. Bellerophon*, 44 L. J. Ad. 5; 31 L. T. N. S. 756).

Upon oath means an affidavit in which the documents must be described.



13. The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which, if any, of the documents therein mentioned he objects to produce; and it may be in the Form No. 9 in Appendix (B.) hereto, with such variations as circumstances may require.

See App. IV.

Notice to  
produce.

14. Every party to an action or other proceeding shall be entitled, at any time before or at the hearing thereof, by notice in writing, to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his solicitor, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such action or proceeding, unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the action, or that he had some other sufficient cause for not complying with such notice.

15. Notice to any party to produce any documents referred to in his pleading or affidavits shall be in the Form No. 10 in Appendix (B.) hereto.

16. The party to whom such notice is given shall, within two days from the receipt of such notice, if all the documents therein referred to have been set forth by him in such affidavit as is mentioned in rule 13, or if any of the documents referred to in such notice have not been set forth by him in any such affidavit, then within four days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice may be in the Form No. 11 in Appendix (B.) hereto, with such variations as circumstances may require.

17. If the party served with notice under rule 15 omits to give such notice of a time for inspection, or objects to give inspection, the party desiring it may apply to a judge for an order for inspection.

Rr. 15, 16, and 17 apply, it will be observed, to documents mentioned in the pleadings and affidavits. In the case of foreign owners of a ship the times in r. 16 will be changed to a reasonable time, according to the distance which the parties may be from this country and to other circumstances (*The Emma*, 34 L. T. N. S. 742; 3 Mar. L. C. N. S. 218).

18. Every application for an order for inspection of documents shall be to a judge. And *except* in the case of documents referred to in the pleadings or affidavits of the party against whom the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. Inspection  
of docu-  
ments.

The principles applicable to rr. 11 and 12 of this order are in point as regards r. 18.

R. 18 is of service chiefly when documents have not been required to be produced or discovery made, and when one party has some knowledge of those in the possession of the other; otherwise, as a matter of fact, this rule is to all intents and purposes the same as r. 11, since if a party obtains the production of a document he is sure to be able to inspect it. But a party should always before proceeding to obtain an order for inspection request the opposite party to give him inspection, otherwise he is liable to be condemned in the costs of the motion (*The Memphis*, L. R. 3 Ad. 23; 21 L. T. N. S. 727). And an affidavit under rule 18 should state as distinctly as possible of what documents inspection is sought (*The Cordelia*, 28 L. T. N. S. 776; 2 Asp. M. C. N. S. 33; a case which may be applied to the above rule).

19. If the party from whom discovery of any kind or inspection is sought objects to the same or any part thereof, the Court or a judge may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the action, or that for any other reason it is desirable that any issue or question in dispute in the action should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

20. If any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall be liable to attachment. He shall also, if a plaintiff, be liable to have his action dismissed for want of prosecution, and, if a defendant, to Failure to  
comply.

have his defence, if any, struck out, and to be placed in the same position as if he had not defended; and the party interrogating may apply to the Court or a judge for an order to that effect, and an order may be made accordingly.

**Service.** 21. Service of an order for discovery or inspection made against any party on his solicitor shall be sufficient service to found an application for an attachment for disobedience to the order. But the party against whom the application for an attachment is made may show in answer to the application that he has had no notice or knowledge of the order.

**Liability of solicitor.** 22. A solicitor upon whom an order against any party for discovery or inspection is served under the last rule, who neglects without reasonable excuse to give notice thereof to his client, shall be liable to attachment.

**Use of answers at trial.** 23. Any party may, at the trial of an action or issue, use in evidence any one or more of the answers of the opposite party to interrogatories without putting in the others: Provided always, that in such case the judge may look at the whole of the answers, and if he shall be of opinion that any other of them are so connected with those put in that the last-mentioned answers ought not to be used without them, he may direct them to be put in.

**Particulars.** Somewhat in the nature of discovery is the demand by one party from the other of particulars of matters mentioned in the pleadings. This is a common practice in the other divisions of the High Court, but is unusual in the Admiralty Division. Such a demand will be generally refused (*The Freedom*, L. R. 2 Ad. 346; 3 Asp. M. C. O. S. 219, 262), except sometimes when particulars are sought, in actions of damage to cargo, as of the perils, accidents, and causes which occasioned a short delivery, and are pleaded by the defendant (*The Hakon Adelsteen*, 43 L. J. Ad. 9), or for the purpose of admitting some liability (*The Wetterhorn*, 34 L. T. N. S. 587; 24 W. R. 324; 3 Asp. M. C. N. S. 168), or of damage to a ship which has been totally lost at sea (*The N. P. Neilson*, 34 L. T. N. S. 588; 24 W. R. 324; 3 Asp. M. C. N. S. 169). Where a suit is brought for necessities or wages, the plaintiff is bound to furnish accounts in the nature of particulars before bringing such an action (*The Fleur de Lis*, L. R. 1 Ad. 39).

## ORDER XXXII.

## ADMISSIONS.

1. Any party to an action may give notice, by his own statement or otherwise, that he admits the truth of the whole or any part of the case stated or referred to in the statement of claim, defence, or reply of any other party. Admissions in pleadings of documents.

2. Either party may call upon the other party to admit any document, saving all just exceptions; and, in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the action may be, unless at the hearing or trial the Court certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the taxing officer, a saving of expense.

3. A notice to admit documents may be in the Form No. 12 in Appendix (B.) hereto.

4. An affidavit of the solicitor or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents, and annexed to the affidavit, shall be sufficient evidence of such admissions.

The notice to admit should be given within a reasonable time before the hearing of the action.

## ORDER XXXIII.

## INQUIRIES AND ACCOUNTS.

The Court or a judge may, at any stage of the proceedings in a cause or matter, direct any necessary inquiries or accounts to be made or taken, notwithstanding that it may appear that there is some special or further relief sought for or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner. Inquiries and accounts.

The jurisdiction of the Court to go into accounts between co-owners of ships under A. C. Act, 1862, s. 8, has already been pointed out, *ante*, Part I., p. 77. The above rule still

further enlarges the jurisdiction of the Court. For example in an action for wages by a master, in which complicated questions of accounts arise, and where it may be doubtful if any sum is due, and where there is another distinct ground of defence, as, misconduct, the Court may, under the above rule, order the accounts to be gone into before the further issue is tried; and in an action for necessaries the Court made use of this order (*The Sully*, 48 L. J. Ad. D. 56).

References  
to regis-  
trar and  
merchants.

When, in order to do full justice in a cause, matters of detail relating to accounts, or to the assessment of damages, should be investigated, after an unascertained sum has been pronounced to be due, it has been the immemorial practice to refer such matters to the registrar alone or assisted by merchants, that he may report thereon to the Court (and see A. C. Act, 1861, a. 23), for it may be laid down as a principle that the Court does not assess damages. Questions of law cannot, however, be referred (*The Ocean*, 10 Jur. 506). But, where the amount in dispute is so small that the further expense consequent on the reference is not justifiable, or where the Court can with ease settle the matter itself, then the above rule is not followed (*The Eleanore*, Br. & L. 135; 33 L. J. Ad. 19), as in a question of consequential damages (*The Maid of Kent*, 50 L. J. Ad. 71). The reference not only may be for the purpose of carrying out the decree of the Court, but also to find facts on which its judgment may be wholly or partially based: it may be ordered by the judge after he has decided the main point in the action, such as whether a bottomry bond was valid or invalid, or in the course of the action before the hearing of the cause. Thus, in an action on a bottomry bond, the accounts were referred to the registrar and merchants, and on their finding that the charges in respect of which the bond was given were improper, it was pronounced against (*The Roderick Dhu*, Swa. 177); and, when a bond was admitted to be valid, the

items for which it was given were referred (*The Glenmanna*, Lush. 115). In an action for necessaries, some sum being due, the registrar will decide upon the actual amount (*The West Friesland*, Swa. 456); and the practice is the same in an action for wages and disbursements (*The Glentamer*, Swa. 415; *The Daring*, L. R. 2 Ad. 260). So, too, in an action for salvage, if it were necessary, any question of the amount of expenses and damage incurred in rendering the service may be referred (*The Salacia*, 2 Hagg. 262; *The Oscar*, 2 Hagg. 257); but this practice is now seldom resorted to, see *ante*, Ch. I., Salvage. In those rather rare cases also when damages are ordered to be paid for improperly arresting a vessel, they will be assessed by the registrar (*The Cathcart*, L. R. 1 Ad. 314; *The Don Ricardo*, L. R. 5 P. D. 121; 49 L. J. Ad. 28).

Moreover, the matter may be referred with directions to the registrar to observe certain principles of law in his investigation (*The St. Cloud*, Br. & L. 3 (19).

And, where several actions have been consolidated, one of such actions can be referred separately, if convenient, without any reference of the others (*The Helen R. Cooper*, L. R. 3 Ad. 339; 40 L. J. Ad. 46).

The order of reference is obtained at the time of the decree from the registrar, and thereupon the practice set out in the following rules from the A. C. R. 1859, must be followed.

107. The following rules shall apply to references by the judge to the registrar, whether the reference be to the registrar alone, or to the registrar assisted by one or two merchants.

The rules as to practice in references, Time.

108. Within twelve days from the day when the order for the reference is made, the solicitor for the claimant shall file the claim and affidavits; and, within twelve days from the day when the claim and affidavits are filed, the adverse solicitor shall file his counter-affidavits.

109. From the filing of the counter-affidavits six days only shall be allowed for filing any further affidavits by either solicitor, save by order of the judge, or by permission of the registrar.

110. Within three days from the expiration of the time allowed for filing the last affidavits, the solicitor for the claimant shall file in the registry a notice, with the stamps for the reference affixed thereto, praying to have the reference placed on the list for hearing ; and, if he shall not do so, the adverse solicitor may apply to the Court to have the claim dismissed with costs.
- Adjournment.** 111. At the time appointed for the reference, if either solicitor be present, the reference may be proceeded with ; but the registrar may adjourn the reference from time to time, as he may deem proper.
- Production of witnesses.** 112. Witnesses may be produced before the registrar for examination, and the evidence shall, on the application of either solicitor, but at the expense, in the first instance, of the party on whose behalf the application is made, be taken down by a short-hand writer or reporter appointed by the Court, who shall be sworn faithfully to report the evidence : and a transcript of the short-hand writer's or reporter's notes, certified by him to be correct, shall be admitted to prove the oral evidence of the witnesses in an objection to the registrar's report.
- Counsel.** 113. Counsel may attend the hearing of any reference, but the expenses attending the employment of counsel shall not be allowed on taxation, unless the registrar shall be of opinion that the attendance of counsel was necessary.
- Costs.** 114. The registrar may, if he think fit, report whether any and what part of the costs of the reference should be allowed, and to whom.
- Filing report.** 115. The solicitor for the claimant shall, within six days from the time when he has received a notice from the registry that the report is ready, take up and file the same in the registry.
116. If the solicitor for the claimant shall not take the steps prescribed in the next preceding rule, the adverse solicitor may take up and file the report, or may apply to the Court to have the claim dismissed with costs.
- Objection to report.** 117. A solicitor intending to object to the registrar's report shall, within six days from the filing of the report, file in the registry a notice, a copy of which shall have been previously served on the adverse solicitor ; and within a further period of twelve days he shall file his petition in objection to the report.
- Printing.** 118. All the rules hereinbefore prescribed respecting the pleadings and proofs in a cause, and the printing thereof, shall, so far as they are applicable, apply to the pleadings, proofs, and printing in an objection to a report of the registrar.
- The practice.** The claim referred to in Rule 108 is a statement which comprises the several items of the claimant's demand. It

must be headed in the same manner as a statement of claim, with the name and number of the cause, and so forth. The several items in the body of the claim should be clearly specified and numbered consecutively (see Precedent, App. V.); with the claim should be filed the receipts and vouchers which relate to it, numbered so as to correspond with the items to which they refer. Notice of the day and time at which the hearing is fixed is sent from the registry to the solicitors engaged in the case. By r. 111 it will be seen that the registrar has full power to adjourn the hearing, and he will do so for any reasonable cause. But, if the adjournment is rendered necessary through the carelessness of the applicant for such adjournment, he will have to pay any costs which it may occasion (*The Kepler*, Lush. 201).

R. 112 permits witnesses to be examined *vidv voce* if necessary or desirable. As to costs, see *post*, O. lv.; and as to fees, App. II. After the case has been heard, the registrar draws up his report, which contains, in important The report cases, the reasons of the decision at which he has arrived, and annexed thereto in all cases is a schedule which shows the several items allowed or disallowed. Sometimes, where a question of law arises upon which the registrar desires the opinion of the Court, he will state a special case for this purpose (see *The John Bellamy*, L. R. 3 Ad. 129; 39 L. J. Ad. 28); when the report is silent as to costs, it is a common practice to take out a summons to confirm it, which is generally quite unnecessary except under these circumstances.

Three courses may be followed after the report has been drawn up and notice thereof has been sent to the respective solicitors. (1) The plaintiff's solicitor may take up and file the report in the registry; or (2), the solicitor for the defendant may take it up and file it, or move the Court to dismiss the claim according to r. 116 (*ante*); or (3), either party, when the report has been filed, may proceed to Objections to report.



object to it. R. 117 (*ante*) is then applicable. After notice of objection the report may be brought before the Court in two ways. A petition in objection may be filed according to rr. 117 and 118, and to this and the subsequent pleadings the rules as to the form and manner of ordinary pleadings are applicable. For precedent, see App. VI.; the ordinary notice of trial and entry for hearing must take place, and the cause will then come on in its order (see *post*, O. xxxvi. On the other hand, if both parties consent, which written consent should be filed in the registry, the matter may be brought before the Court on motion (see *The Edmond*, Lush. 211). The procedure at the hearing of the petition is the same as at the hearing of an ordinary action. Fresh evidence will not be allowed unless the Court is satisfied that it could not by proper diligence and application have been produced before the registrar; and an application for this purpose must be supported by affidavits, stating precisely the character of the new evidence which is required (*The Flying Fish*, Br. & L. 436; 34 L. J. Ad. 113; *The Thuringia*, 41 L. J. Ad. 20; 26 L. T. N. S. 446). No objection can be taken to any item which was not objected to before the registrar (*The Princess Helena*, Lush. 191; 30 L. J. Ad. 137), in fact, a new case will not be allowed to be set up (*The Glenmanna*, Lush. 115). The whole burden of proof lies on the party who objects to the report (*The Gazelle*, 2 W. Rob. 285), for there is a strong presumption in favour of its correctness (*The Sir George Seymour*, 1 Spk. 67), so that it requires weighty reasons to induce the Court to reverse it. The Court may confirm the report, or allow all or some of the objections. In the latter case it may direct a second reference (*The Matchless*, 10 Jurist, 1017; (*The Flying Fish*, *ante*), or send the report back for reconsideration as to the items which have been objected to, or itself make the alterations. In one case the judge himself reheard the reference with the registrar and merchants, assisted by a

surveyor and a merchant (*The Sir George Seymour*, 1 Spk. 67).

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ORDER XXXIV.

QUESTIONS OF LAW.

1. The parties may, after the writ of summons has been issued, concur in stating the questions of law arising in the action in the form of a special case for the opinion of the Court. Every such special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the questions raised thereby. Upon the argument of such case the Court and the parties shall be at liberty to refer to the whole contents of such documents, and the Court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial. Special case.

2. If it appear to the Court or a judge, either from the statement of claim or defence or reply or otherwise, that there is in any action a question of law which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, or before any reference is made to a referee or arbitrator, the Court or judge may make an order accordingly, and may direct such question of law to be raised for the opinion of the Court, either by special case or in such other manner as the Court or judge may deem expedient, and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed.

3. Every special case shall be printed by the plaintiff, and signed by the several parties or their solicitors, and shall be filed by the plaintiff. Printed copies for the use of the judges shall be delivered by the plaintiff.

4. No special case in an action to which a married woman, infant or person of unsound mind is a party shall be set down for argument without leave of the Court or a judge, the application for which must be supported by sufficient evidence that the statements contained in such special case, so far as the same affect the interest of such married woman, infant, or person of unsound mind, are true.

5. Either party may enter a special case for argument by delivering to the proper officer a memorandum of entry, in the Form No. 13 in Appendix (B.) hereto, and also if any married woman, infant, or per-

son of unsound mind be a party to the action, producing a copy of the order giving leave to enter the same for argument.

A special case for the purpose of raising a question of law was formerly seldom used in the Court of Admiralty; but it is now of more frequent use, and, when convenient, this form of procedure may well be employed. R. 1 refers to a case stated by consent of the parties; r. 2 by the Court, on the application of one of the parties. The application under r. 2 should be by a summons to show cause why the facts should not be stated in a special case, and the applicant should have an affidavit showing that no facts are in dispute in the action. The Court of Appeal has decided that an order may be made any time after the defendant has appeared, and even before the delivery of the statement of claim (*Metropolitan Board of Works v. The New River Co.*, L. R. 2 Q. B. 67; 36 L. J. Q. B. 183). For form of case, see *The Two Ellens*, L. R. 3 Ad. 345; 41 L. J. Ad. 33.

As to special case by registrar after a reference, see *ante*, O. xxxiii. p. 213.

By R. 9 (April, 1880) the parties may agree to pay a fixed sum according to the decision of the case.

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## ORDER XXXV.

### PROCEEDINGS IN DISTRICT REGISTRIES.

12. Order XXXV., rule 1, of the "Rules of the Supreme Court" is hereby annulled, and the following shall stand in lieu thereof:—

Proceedings to be taken in district registries.

1. Where an action proceeds in the district registry all proceedings, except where by any of the rules of the Supreme Court it is otherwise provided, or the Court or a judge shall otherwise order, shall be taken in the district registry, down to and including final judgment, and every final judgment and every order for an account by reason of the default of the defendant or by consent shall be entered in the district registry in the proper book, in the same manner as a like judgment or order in an action proceeding in London would be entered in London.

Where an action proceeds in the district registry, final judgment shall be entered in such registry, unless the judge at the trial or the Court or a judge shall otherwise order.

2. Subject to the foregoing rules, where an action proceeds in the district registry the judgment and all such orders therein as require to be entered, except orders made by the district registrar under the authority and jurisdiction vested in him under these rules, shall be entered in London, and an office copy of every judgment and order so entered shall be transmitted to the district registry to be filled with the proceedings in the action.

3. Where an action proceeds in the district registry all writs of execution for enforcing any judgment or order therein shall issue from the district registry, unless the Court or a judge shall otherwise direct. Where final judgment is entered in the district registry costs shall be taxed in such registry unless the Court or judge shall otherwise order.

Writs of execution

As to writs of execution, see Oo. xlii., xliii., *et seq.*

4. Where an action proceeds in a district registry the district registrar may exercise all such authority and jurisdiction in respect of the action as may be exercised by a judge at chambers, except such as by these rules a master of the Queen's Bench, Common Pleas, or Exchequer Divisions is precluded from exercising.

Jurisdiction of district registrar.

As to jurisdiction of registrar at chambers, see *post*, O. liv.

5. Every application to a district registrar shall be made in the same manner in which applications at chambers are directed to be made by these rules.

See O. liv. r. 1.

6. If any matter appears to the district registrar proper for the decision of a judge, the registrar may refer the same to a judge, and the judge may either dispose of the matter or refer the same back to the registrar with such directions as he may think fit.

References to judge.

7. Any person affected by any order or decision of a district registrar may appeal to a judge. Such appeal may be made notwithstanding that the order or decision was in respect of a proceeding or matter as to which the district registrar had jurisdiction only by consent. Such appeal shall be by summons within four days after the decision complained of, or such further time as may be allowed by a judge or the registrar.

Appeal from district registrar.

8. An appeal from a district registrar shall be no stay of proceedings unless so ordered by a judge or the registrar.

9. Every district registrar and other officer of a district registry shall be subject to the orders and directions of the Court or a judge as fully as any other officer of the Court; and every proceeding in a district registry shall be subject to the control of the Court or a judge, as fully as a like proceeding in London.

Removal  
of action  
from  
district  
registry.

11. In any action which would, under the foregoing rules, proceed in the district registry, any defendant may remove the action from the district registry as of right in the cases, and within the times, following :—

Where the writ is not specially indorsed, any defendant may remove the action as of right at any time after appearance and before delivering a defence, and before the expiration of the time for doing so.

As to procedure, see *The General Birch*, 33 L. T. N. S. 792; 24 W. R. 24, *ante*, note to O. xii., r. 5.

By party  
intervening.

11a. In an Admiralty action *in rem*, any person who may have duly intervened and appeared may remove an action from a district registry as of right.

Procedure.

12. Any defendant desirous to remove an action as of right under rule 11 may do so by serving upon the other parties to the action, and delivering to the district registrar, a notice, signed by himself or his solicitor, to the effect that he desires the action to be removed to London, and the action shall be moved accordingly: Provided, that if the Court or a judge shall be satisfied that the defendant giving such notice is a merely formal defendant, or has no substantial cause to interfere in the conduct of the action, such Court or judge may order that the action may proceed in the district registry notwithstanding such notice.

13. In any case not provided for by the last two preceding rules, any party to an action proceeding in a district registry may apply to the Court or a judge, or to the district registrar, for an order to remove the action from the district registry to London; and such Court, judge, or registrar may make an order accordingly, if satisfied that there is sufficient reason for doing so, upon such terms, if any, as shall seem just.

Any party to an action proceeding in London may apply to the Court or a judge for an order to remove the action from London to any district registry; and such Court or judge may make an order accordingly, if satisfied that there is sufficient reason for doing so, upon such terms, if any, as shall seem just.

14. Whenever any proceedings are removed from the district registry to London, the district registrar shall transmit to the proper officer of the High Court of Justice all original documents, if any, filed in the district registry, and a copy of all entries in the books of the district registry of the proceedings in the action.

15. Every district registrar shall account for and pay over to the Treasury all moneys paid into Court at the registry of which he is registrar, in such manner and at such times as may be from time to time directed by the Treasury.

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### ORDER XXXVI.<sup>1</sup>

#### TRIAL.

2. Actions shall be tried and heard either before a judge or judges, or before a judge sitting with assessors, or before a judge and jury, or before an official or special referee, with or without assessors.

An action is always tried in the Admiralty Division by the judge alone, or assisted by assessors. As to assessors, see J. A. 1873, s. 56, and *post*, r. 28. The Admiralty Division possesses no machinery for summoning jurors, but by 3 & 4 Vict. c. 65, ss. 11—16, the Court of Admiralty had power to direct a trial by jury in London, or at the county assizes, of any specified issue. Such power was occasionally but rarely used (see *The Harriet*, 1 W. Rob. 439, where an issue was directed to try the existence of a custom). Under rr. 27 and 29 of this Order, the judge of the Admiralty Division has a similar power; and, therefore, if it were desired to try an action by a judge and jury, application could be made to the judge under these rules, and the cause, if so tried, would, so far as the particular issue in dispute was concerned, continue under the procedure in use in the other division of the High Court.

As to referees, it would be quite feasible to employ them,

<sup>1</sup> The portions of the following rules, which relate to trial by jury, have been omitted, as inapplicable to the practice in the Admiralty Division.

but the registrar's or deputy-registrar's duties are very analogous to those intended of the official referees. As to references to registrar and merchants, see O. xxxiii., p. 210.

Time for notice of trial.

3. Subject to the provisions of the following rules, the plaintiff may, with his reply, or at any time after the close of the pleadings, give notice of trial of the action.

4. Subject to the provisions of the following rules, if the plaintiff does not, within six weeks after the close of the pleadings, or within such extended time as a Court or judge may allow, give notice of trial, the defendant may, before notice of trial given by the plaintiff, give notice of trial.

Dismissal of action for want of prosecution.

4a. The defendant, instead of giving notice of trial, may apply to the Court or judge to dismiss the action for want of prosecution; and, on the hearing of such application, the Court or a judge may order the action to be dismissed accordingly, or may make such other order, and on such terms, as to the Court or judge may seem just.

This rule is applicable if there is undue delay on the part of the plaintiff; and, if the defendant have a counter-claim in such an action, having obtained the dismissal of the plaintiff's claim, he can move for judgment on his own counter-claim (*Aitken v. Dunbar*, 46 L. J. Ch. 489).

6. Subject to the provisions of the preceding rules, the Court or a judge may, in any action at any time or from time to time, order that different questions of fact arising therein be tried by different modes of trial, or that one or more questions of fact be tried before the others, and may appoint the place or places for such trial or trials, and in all cases may order that one or more issues of fact be tried before any other or others.

Ten days' notice of trial.

9. Ten days' notice of trial shall be given, unless the party to whom it is given has consented to take short notice of trial; and shall be sufficient in all cases, unless otherwise ordered by the Court or a judge. Short notice of trial shall be four days' notice.

Notice of trial.

10. Notice of trial shall be given before entering the action for trial.

Notice of trial must be given to the opposite party: as to the time at which notice may be given (*ante*, r. 3, and as to length of notice, *ante*, r. 9). Under O. lvii., r. 7, which is specially applicable to Admiralty actions, the

judge on summons or motion can dispense with notice of trial, or abridge it and fix an early day for the hearing of the cause, as is often done when there is any pressing reason for a speedy trial.

10a. Unless within six days after notice of trial is given the cause shall be entered for trial by one party or the other, the notice of trial shall be no longer in force. Entry for trial.

11. Notice of trial shall not be or operate as for any particular sittings; but shall be deemed to be for any day after the expiration of the notice on which the action may come on for trial in its order upon the list. Notice.

As soon as notice has been given to the opposite side, the party who is desirous of having the action tried should enter his cause at the registry, where it will be placed on the list for hearing, and will then come on according to its position on the list, or according to the terms of any order which may have been made by the judge on application to fix a day for the hearing. Actions proceeding in district registries must be entered at such registries, and the papers are then forwarded to London. And as to fixing an early day for the trial, see note to preceding rule.

13. No notice of trial shall be countermanded, except by consent, or by leave of the Court or a judge, which leave may be given subject to such terms as to costs, or otherwise, as may be just. Counter-manding notice of trial.

14. If the party giving notice of trial (for London or Middlesex), omits to enter the cause for trial on the day of or day after giving notice of trial, the party to whom notice has been given may, unless the notice has been countermanded under the last rule, within four days, enter the action for trial. Entry of action.

17. The party entering the action for trial shall deliver to the officer two copies of the whole of the pleadings in the action, one of which shall be for the use of the judge at the trial. Such copies shall be in print, except as to such parts, if any, of the pleadings as are by these rules permitted to be written. Copies of pleadings.

These pleadings must be delivered at the registry.

18. If, when an action is called on for trial, the plaintiff appears and the defendant does not appear, then the plaintiff may prove his claim, so far as the burden of proof lies upon him. Non-appearance of defendant at hearing.



Non-ap-  
pearance of  
plaintiff.

19. If, when an action is called on for trial, the defendant appears, and the plaintiff does not appear, the defendant, if he has no counter-claim, shall be entitled to judgment dismissing the action, but, if he has a counter-claim, then he may prove such claim so far as the burden of proof lies upon him.

Practice  
at the  
hearing.

One of the first occasions on which rule 13 was used in the Admiralty Division was in the case of *The William Lecklie*, Nov. 10, 1881. The case was shortly opened, and one witness called to prove the facts. Generally, however,—to come to ordinary defended actions,—it is the practice to dispense with any opening statements, and to proceed at once to the evidence. Unless the case is one of great length or difficulty the costs of two counsel only on each side will be allowed on taxation. But in a salvage suit plaintiffs whose interests are adverse to each other may be represented by separate counsel (*The Scout*, L. R. 3 Ad. 514 n.; 41 L. J. Ad. 42).

The rule that the party on whom the burden of proof lies must begin is applicable to Admiralty actions. And after some diversity of practice it is now settled that in all damage causes, whether inevitable accident be pleaded or not, the plaintiff must begin (*The Otter*, L. R. 4 Ad. 203; 30 L. T. N. S. 43). Where there are rival salvors, and the actions have been consolidated, those have the right to begin who have first entered their causes (*The Morocco*, 24 L. T. N. S. 598).

Opening statements by counsel are, as above stated, unusual, and the witnesses are at once examined by their counsel, are cross-examined by the opposite counsel, and then re-examined. But the counsel of rival salvors may cross-examine each other's witnesses on points as to which they are at issue (*The Morocco*, 24 L. T. N. S. 598). When the evidence is given on affidavits, these have only to be read to the Court. After the evidence on both sides is concluded, the leading counsel for the plaintiff addresses the Court, who is followed by that of the defendant, and the

counsel for the plaintiff has a right to reply. Should a point of law arise, the Court will hear two counsel on each side.

At the conclusion of the trial, unless the judge defers his decision, he gives an absolute judgment or a judgment subject to a reference to the registrar and merchants (see *ante*, O. xxxi.). But in either case the decree will then be entered in the minute book by the registrar (see O. xli., and the remarks thereon<sup>1</sup>).

Each witness during the hearing of the cause should be kept out of Court until his evidence is required. After each witness is sworn, the solicitor who produces him should hand a slip of paper containing the name and number of the cause and the full name of the witness to the registrar. For fees payable, see App. II., p. cxxix.

21. The judge may, if he think it expedient for the interests of justice, postpone or adjourn the trial for such time and upon such terms, if any, as he shall think fit. Adjourn-  
ment.

28. Trials with assessors shall take place in such manner and upon such terms as the Court or a judge shall direct. Trials with  
assessors.

The assessors of the judge, where he requires advice on the nautical facts of the case, are two of the Trinity masters; their duty is solely to advise, and the responsibility for the decision of the case rests wholly with the judge (*The Magna Charta*, 25 L. T. N. S. 512 (P. C.); *The Aid*, L. R. 6 P. D. 84; 50 L. J. Ad. D. 40). In actions of damage and salvage their attendance may be obtained as a matter of course by filing a *præcipe* in the registry requesting their attendance (for fees payable see App. II.). In other than these actions their attendance will only be granted after application to the judge; in salvage cases the practice has been assimilated to that in actions for damage by collision. Where Trinity masters are present, evidence in regard to matters of nautical skill is inadmissible (*The Ann and Mary*, 2 W. Rob. 189; *The Sir Robert*

<sup>1</sup> Rules 24, 25, 29a—34 of this Order are not applicable to trials in the Admiralty Division.

*Peel*, 43 L. T. N. S. 364 (C. A.); 4 Asp. M. C. N. S. 321). Where one party applies the judge will, in practice, exercise his discretion as to granting the request (*The Houthandel*, 1 Spk. 27). A fee of two guineas a day is paid to each of the assessors. In damage causes where each party is held to blame, the fees are divided between the two parties.

Inspection  
by Trinity  
masters.

Either party may apply to the Court for an order permitting the assessors to view any property the inspection of which may be material to the issue in dispute (A. C. A. 1861, s. 18); in so doing they should if necessary be accompanied by the solicitors of the parties (*The Germania*, 37 L. J. Ad. 59; 19 L. T. N. S. 20).

27. The Court or a judge may, if it shall appear either before or at the trial that any issue of fact can be more conveniently tried before a jury, direct that such issue shall be tried by a judge with a jury.

29. In any cause the Court or a judge of the division to which the cause is assigned may, at any time or from time to time, order the trial and determination of any question or issue of fact, or partly of fact and partly of law, by any commissioner or commissioners appointed in pursuance of 29th section of the said Act, or at the sittings to be held in Middlesex or London, and such question or issue shall be tried and determined accordingly.

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## ORDER XXXVII.

### EVIDENCE GENERALLY.

**Evidence.** 1. In the absence of any agreement between the parties, and subject to these rules, the witnesses to the trial of any action or at any assessment of damages, shall be examined *videlicet* and in open Court, but the Court or a judge may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial, on such conditions as the Court or judge may think reasonable, or that any witness whose attendance in Court ought for some sufficient cause to be dispensed with, be examined by interrogatories or otherwise before a commissioner or examiner; provided that, where it appears to the Court or judge that the other party *bond fide* desires the production

of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

It is now the rule that witnesses are examined *videlicet* before the Court, unless the parties consent that the evidence shall be taken on affidavit, or unless the judge on application orders the evidence to be taken by affidavit or the witness to be examined before a commissioner or examiner. Sometimes also witnesses are examined in Court before the actual hearing of the cause, either by consent of the parties or by an order obtained by a summons. Such a consent as above mentioned must be in writing (*The New Westminster Brewery Co. v. Hannah*, L. R. 1 Ch. D. 278 ; 24 W. R. 137). As to evidence on affidavit, see *post*, O. xxxviii ; and, as to examination of witnesses before an officer of the Court, see *post*, r. 4 of this order ; and, as to rejection of evidence to nautical skill where Trinity masters are present, see *ante*, O. xxxvii., r. 28. As regards logs of light-ships or light-houses, a copy accompanied and certified by an affidavit from the official of the Trinity House is usually admitted in evidence. Strictly speaking, the officer of the Trinity House should produce the copy (see *The Maria das Dores*, Br. & L. 27).

The log is not evidence for the person who produces it ; and, even if purporting to be made by the first mate, cannot be produced in evidence if he has died since the collision ; and the same rule applies to depositions of a master made before a receiver of wreck (*The Henry Coxon*, L. D. 3 P. D. 156 ; 47 L. J. Ad. D. 83). There is an important distinction to be kept in view between declarations by a master and declarations by the officers and crew, since the former are evidence against the owners as being made by their agent, while the latter are inadmissible (*The Actæon*, 1 Spk. 176 ; *The Manchester*, 2 W. Rob. 62). The admission of a pilot is also inadmissible (*The Lord Seaton*, 9 Jur. 603 ; 2 W. Rob. 291), unless it is part of the *res gestæ* (*The Schwalbe*, Swa. 521).

**Enforcing attendance of witness.** The attendance of witnesses and the production of documents, &c., is enforced by the usual writs of *subpœna ad testificandum* and *subpœna duces tecum* (see 3 & 4 Vict. c. 65, s. 9). By A. C. Act, 1861, s. 21, service in any part of Great Britain and Ireland of either of these writs issued under the seal of the Court of Admiralty was as effectual as if the same had been served in England or Wales: this would apply to the Admiralty Division. The writ is issued from the registry.

**Costs.** The costs of material witnesses, who, though in attendance at the hearing, have not been called, are allowed (*The Biddick*, 38 L. J. Ad. 24; 19 L. T. N. S. 705), but not those of a receiver of wreck, when certified copies of the statements made before him would have answered all purposes (*The Cromwell*, L. R. 3 Ad. 316).

**Evidence on affidavit.** 2. Upon any motion, petition, or summons, evidence may be given by affidavit; but the Court or a judge may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit.

3. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. The costs of every affidavit which shall unnecessarily set forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same.

The principles of evidence stated in this rule must be strictly adhered to. As to filing, see next page.

**Examination of witnesses before officer of court or other person.** 4. The Court or a judge may, in a cause or matter where it shall appear necessary for the purposes of justice, make any order for the examination upon oath before any officer of the Court, or any other person or persons, and at any place, of any witness or person, and may order any deposition so taken to be filed in the Court, and may empower any party to any such cause or matter to give such deposition in evidence therein on such terms, if any, as the Court or a judge may direct.

Proceedings under this rule are still also regulated by rules 88—95 of A. C. R., 1859. See Appendix III. p. 389.

The following rules were added in April, 1880:—

3a. Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject. Every affidavit shall be written or printed bookwise. No costs shall be allowed for any affidavit or part of an affidavit substantially departing from this rule.

Form of affidavits.

3b. Every affidavit shall state the description and true place of abode of the deponent.

Description and address of deponent to be stated.

3c. In every affidavit made by two or more deponents the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer it shall be sufficient to state that it was sworn by both (or all) of the "above-named" deponents.

Affidavits made by two or more deponents. Affidavit to be filed.

3d. Every affidavit shall be filed in the Central Office. There shall be appended to every affidavit a note showing on whose behalf it is filed.

3e. No affidavit having in the jurat or body thereof any interlineations, alteration, or erasure shall, without leave of the Court or a Judge, be read or made use of in any matter depending in Court unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the officer taking the affidavit, or, if taken at the Central Office, either by his initials or by the stamp of that office, nor in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are re-written and signed or initialled in the margin of the affidavit by the officer taking it.

Alterations in affidavits.

3f. Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his or her signature in the presence of the officer. No such affidavit shall be used in evidence in the absence of this certificate, unless the Court or a Judge is otherwise satisfied that the affidavit was read over to and apparently perfectly understood by the deponent.

Affidavits by illiterate persons.

3g. In cases in which by the present practice an original affidavit is allowed to be used, it shall before it is used be stamped with a proper filing stamp, and shall at the time when it is used be delivered to and left with the proper officer in Court or in Chambers, who shall send it to the Central Office. An office copy of an affidavit may in all cases be used, the original affidavit having been previously filed in the Central Office, and the copy duly authenticated with the seal of that office.

Stamping of affidavits, and use of office copies.

## ORDER XXXVIII.

## EVIDENCE BY AFFIDAVIT.

Evidence  
by affi-  
davit.

1. Within fourteen days after a consent for taking evidence by affidavit as between the plaintiff and the defendant has been given, or within such time as the parties may agree upon or a judge in chambers may allow, the plaintiff shall file his affidavits, and deliver to the defendant or his solicitor a list thereof.

Time.

2. The defendant, within fourteen days after delivery of such list, or within such time as the parties may agree upon or a judge in chambers may allow, shall file his affidavits, and deliver to the plaintiff or his solicitor a list thereof.

3. Within seven days after the expiration of the said fourteen days or such other time as aforesaid, the plaintiff shall file his affidavits in reply, which affidavits shall be confined to matters strictly in reply, and shall deliver to the defendant or his solicitor a list thereof.

Cross-ex-  
amination.

4. When the evidence is taken by affidavit, any party desiring to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party, may serve upon the party by whom such affidavit has been filed, a notice in writing requiring the production of the deponent for cross-examination before the Court at the trial, such notice to be served at any time before the expiration of fourteen days next after the end of the time allowed for filing affidavits in reply, or within such time as in any case the Court or a judge may specially appoint: and, unless such deponent is produced accordingly, his affidavit shall not be used as evidence, unless by the special leave of the Court. The party producing such deponent for cross-examination shall not be entitled to demand the expenses thereof in the first instance from the party requiring such production.

5. The party to whom such notice as is mentioned in the last preceding rule is given, shall be entitled to compel the attendance of the deponent for cross-examination, in the same way as he might compel the attendance of a witness to be examined.

Printing  
evidence.

6. When the evidence in any action is, under this order, taken by affidavit, such evidence shall be printed; and the notice of trial shall be given at the same time or times after the close of the evidence as in other cases is by these rules provided, after the close of the pleadings.

The filing mentioned in r. 1 is at the registry.

## ORDER XL.

## MOTION FOR JUDGMENT.

1. Except where by the Act or by these rules it is provided that **Motion** judgment may be obtained in any other manner, the judgment of the **for judgment.** Court shall be obtained by motion for judgment.

See remarks to O. xiii. (r. 10), and O. xxix. This rule, except, possibly, under the orders here referred to, has but little application to proceedings in the Admiralty Division.

9. No action shall, except by leave of the Court or a judge, be set **Time for** down on motion for judgment after the expiration of one year from **setting** the time when the party seeking to set down the same first became **down.** entitled so to do.

10. Upon a motion for judgment, or for a new trial, the Court may, if satisfied that it has before it all the materials necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly, or may, if it shall be of opinion that it has not sufficient materials before it to enable it to give judgment, direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made as it may think fit.

11. Any party to an action may, at any stage thereof, apply to the **Order on** Court or a judge for such order as he may, upon any admissions of **admission** fact in the pleadings, be entitled to, without waiting for the determination of any other question between the parties. The foregoing rules of this order shall not apply to such applications; but any such application may be made by motion, so soon as the right of the party applying to the relief claimed has appeared from the pleadings. The Court or a judge may, on any such application, give such relief, subject to such terms, if any, as such Court or judge may think fit. **of fact.**

The exercise of the power vested in the judge by this last rule is wholly in his discretion (*Mellor v. Sidebottom*, L. R. 5 Ch. D. 342; 46 L. J. Ch. 398; and for examples of the working of this rule see *Turquand v. Wilson*, L. R. 1 Ch. D. 85; 45 L. J. Ch. 103; and *Martin v. Gale*, 36 L. T. N. S. 357). This rule might be found useful in actions of



possession, in suits between co-owners, and in actions as to mortgages.

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## ORDER XLI.

### ENTRY OF JUDGMENT.

**Entry of judgment.** 1. Every judgment shall be entered by the proper officer in the book to be kept for that purpose. The party entering the judgment shall deliver to the officer a copy of the whole of the pleadings in the action other than any petition or summons; such copy shall be in print, except such parts (if any) of the pleadings as are by these rules permitted to be written: Provided that no copy need be delivered of any pleading a copy of which has been delivered on entering any previous judgment in such action. The Forms in Appendix (D.) hereto may be used, with such variations as circumstances may require.

**Date.** 2. Where any judgment is pronounced by the Court or a judge in Court, the entry of the judgment shall be dated as of the day on which such judgment is pronounced, and the judgment shall take effect from that date.

3. In all cases not within the last preceding rule, the entry of judgment shall be dated as of the day on which the requisite documents are left with the proper officer for the purpose of such entry, and the judgment shall take effect from that date.

4. Where under the Act or these rules or otherwise it is provided that any judgment may be entered or signed upon the filing of any affidavit or production of any document, the officer shall examine the affidavit or document produced, and, if the same be regular and contain all that is by law required, he shall enter judgment accordingly.

5. Where by the Act or these rules or otherwise any judgment may be entered pursuant to any order or certificate or return to any writ, the production of such order or certificate sealed with the seal of the Court, or of such return, shall be a sufficient authority to the officer to enter judgment accordingly.

**The decree.**

Judgment *eo nomine* is not entered in the Admiralty Division, but the decree of the judge is entered in a minute book. The last part of r. 1 of this order is, therefore, not applicable R. 3 would only apply in the very rare case

of a judgment by default in an action *in personam*, when, it would seem, that the claim in the writ or statement of claim would take the place of the decree.

In actions of salvage, wages, and necessaries, interest at the rate of 4 per cent. runs on the amount awarded, from the date of entering judgment; and such amount is a judgment debt within O. xlii., r. 14, since by s. 76, J. A. 1873, the statute 1 & 2 Vict. c. 110, s. 17, applies to Admiralty actions (*The Jones Brothers*, 37 L. T. N. S. 164; 3 Asp. M. C. N. S. 478). Interest.

As to interest in damage and bottomry actions, see *ante*, Part I., Damage and Bottomry, pp. 57, 91.

The following remarks describe the practice subsequent to the decree:—When judgment is pronounced for a claim in an action *in rem* where bail has not been given, the parties usually settle the matter out of Court, and consent to a release of the *res*, otherwise it will be sold and the proceeds paid by the marshal into the registry. If it is necessary to sell the property, a commission for appraisal and sale must be obtained at the registry in pursuance of the decree. If the *res* has already been appraised a further appraisal is unnecessary; and, as to official appraisal, see *ante*, O. v., r. 11, p. 153, and in that case a commission for sale only is required upon the filing of the usual præcipe. The commission, with a præcipe for execution, must be left at the marshal's office. Judgment  
in action  
in rem  
where bail  
has not  
been  
given

The following rules from A. C. R. 1859 are then applicable:—

124. Every commission for the appraisal or sale of property under the decree of the Court shall, unless the judge shall otherwise order, be executed by the marshal or his substitutes. Sale by  
the  
marshal.

125. The marshal shall pay into Court the gross proceeds of any property which shall have been sold by him, and shall at the same time bring into the registry the account of sale, with vouchers in support thereof, for taxation by the registrar. Payment  
of proceeds  
into Court.

126. Any person interested in the proceeds may be heard before the registrar on the taxation of the marshal's account of expenses, Objection  
to mar-

shall's expenses. and an objection to the taxation shall be heard in the same manner as an objection to the taxation of a solicitor's bill of costs.

The marshal fixes the time and place of sale, which is duly made known by advertisement; and at such time as announced the property is sold by auction. But, if it is to the interest of the parties concerned, the marshal may sell the *res* by private contract. If at the auction the biddings do not reach the appraised value, the property cannot be sold, but an order must be obtained from the judge for leave to sell it for a smaller sum. On the production of a bill of sale by the marshal, and an office copy of the order of the Court, the purchaser will obtain a new register of the ship and a perfect title to the property, whilst any one who may have claims against it must enforce them against the proceeds in the registry.<sup>1</sup>

Where one party obtains the sale of a vessel, which is for the benefit of several claimants, the costs of such sale are the first charge on the proceeds (*The Panthea*, 25 L. T. N. S. 389; 1 Mar. L. C. N. S. 133).

Where bail  
has been  
given.

Where bail has been given, if the amount for which the decree is made is not paid, together with the taxed costs, into the registry, the plaintiff must obtain an order from the judge, ordering the defendant and his sureties to pay the amount by a certain day. If this is not done, the plaintiff should sue out a writ of execution in the shape of a *fi. fa.*, under O. xlii, r. 15, or for a writ of attachment under O. xlii. and O. xlv. For the procedure as to these writs, see the above Orders.

Where the property has not been arrested nor bail given, the procedure will be the same as in the last mentioned case, except that there are no sureties to proceed against.

If a reference has been ordered, proceedings to enforce payment cannot be taken until the report is filed.

<sup>1</sup> Proceeds in the registry cannot be attached by process out of the Mayor's Court (*The Albert Cresby*, Lush. 101).

Where the property has been sold and the proceeds paid into Court before the hearing, it is only necessary when judgment is pronounced for the plaintiff to obtain an order for the payment out of the sum which is awarded (see *infra*).

The rank which claims have against the proceeds in the registry has already been pointed out (Part I. Ch. X.), but, if claimants are *in pari conditione*, the one who has first obtained a decree is entitled to rank first against such proceeds (*The Markland*, L. R. 3 Ad. 340; 24 L. T. N. S. 596). Payment  
of pro-  
ceeds.

To obtain payment of the money out of Court, r. 128 A. C. R. 1859, comes into force: "All orders for the payment of money out of Court shall be signed by the judge." To obtain an order, application should be made in Chambers or in Court, and, a minute and the order being filed in the registry, the money will be paid out. If any person desires to prevent the payment out of the proceeds, he must enter a caveat against the payment out in the same manner as against a release from arrest: for procedure (see *ante*, O. v., p. 158). Payment  
out of  
Court.

If there is any balance remaining in the registry after payment of the several claimants, it will be paid out according to the usual practice by means of an order of the judge. As soon as a specified sum has been ordered to be paid to a particular claimant, it becomes his property, so as to be available as assets for his creditors, subject to any lien which there may be on it, as that of a solicitor for his costs, who has the first claim on the fund, unless he fails to take proper means to assert his rights (*The Olive*, Swa. 423; *The Albert Crosby*, Lush. 101; *The Jeff Davis*, L. R. 2 Ad. 1).<sup>1</sup>

Where judgment is pronounced for a plaintiff in an action *in personam*, the methods of enforcing such judgment by Judgment  
in action  
*in per-  
sonam*.

<sup>1</sup> These cases partly raised the question of the rights of holders of garnishee orders over a fund under the control of the Court, but they seem to show that if these orders were properly brought to the notice of the Court, the claim to the fund will be recognised.

execution, &c., which are common to all divisions of the High Court, may be employed (see *post*, O. xlii., *et seq.*).

In action  
of pos-  
session.

Where judgment is given for the plaintiff in an action of possession, a præcipe for a release must be filed in the registry, and the same procedure used as already mentioned in regard to a release (see *ante*, O. v., r. 11, p. 157; and, as to adding parties so as to obtain costs, see O. xvi., r. 13, p. 177).

If judgment is given for the defendant when the ship has been arrested, the same procedure is applicable as mentioned in the last paragraph, and if bail has been given the Court makes as part of the decree an order dismissing the bail.

Altering  
decree.

When a decree has been made the Court has power, whilst the subject matter of the action is within its jurisdiction, to alter such decree if an obvious error has been committed by it in regard to such decree or order, and it has been brought to its notice as quickly as possible (*The Monarch*, 1 W. Rob. 21; *The Markland*, L. R. 3 Ad. 340; 24 L. T. N. S. 596), but it will be rescinded with reluctance (*The Glenburn*, Br. & L. 62).

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## ORDER XLII.

### EXECUTION.

**Execution.** 1. A judgment for the recovery by or payment to any person of money may be enforced by any or the modes by which a judgment or decree for the payment of money of any Court whose jurisdiction is transferred by the said Act might have been enforced at the time of the passing thereof.

2. A judgment for the payment of money into Court may be enforced by writ of sequestration, or, in cases in which attachment is authorized by law, by attachment.

This rule has considerably enlarged the powers of the Admiralty Division. A writ of attachment was formerly the only remedy used in the Admiralty Court. Of course,

as shown by the notes to the preceding order, where the *res* is in the power of the Court, writs of execution are unnecessary.

4. A judgment for the recovery of any property other than land or money may be enforced :
- By writ for the delivery of the property :
  - By writ of attachment :
  - By writ of sequestration.
- The recovery of property.

See O. xlvii., O. xlix.

5. A judgment requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by writ of attachment, or by committal.

6. In these rules the term "writ of execution" shall include writs of fieri facias, capias, elegit, sequestration, and attachment, and all subsequent writs that may issue for giving effect thereto. And the term "issuing execution against any party" shall mean the issuing of any such process against his person or property as under the preceding rules of this order shall be applicable to the case.

Meaning of "writ of execution."

7. Where a judgment is to the effect that any party is entitled to any relief subject to or upon the fulfilment of any condition or contingency, the party so entitled may, upon the fulfilment of the condition or contingency, and demand made upon the party against whom he is entitled to relief, apply to the Court or a judge for leave to issue execution against such party. And the Court or judge may, if satisfied that the right to relief has arisen according to the terms of the judgment, order that execution issue accordingly, or may direct that any issue or question necessary for the determination of the rights of the parties be tried in any of the ways in which questions arising in an action may be tried.

Judgment in fulfilment of contingency.

8. Where a judgment is against partners in the name of the firm, execution may issue in manner following :

Against partners.

- (a.) Against any property of the partners as such :
- (b.) Against any person who has admitted on the pleadings that he is, or has been adjudged to be, a partner :
- (c.) Against any person who has been served as a partner with the writ of summons, and has failed to appear :

If the party who has obtained judgment claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the Court or a judge for leave so to do ; and the Court

or judge may give such leave if the liability be not disputed, or, if such liability be disputed, may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined.

Issue of writ.

9. No writ of execution shall be issued without the production to the officer by whom the same should be issued, of the judgment upon which the writ of execution is to issue, or an office copy thereof, showing the date of entry. And the officer shall be satisfied that the proper time has elapsed to entitle the judgment creditor to execution.

A direction by the Court is equivalent to a formal judgment (*Bolton v. Bolton*, L. R. 3 Ch. D. 276 ; 35 L. T. N. S. 358 ; and see *post*, r. 20).

Præcipe.

10. No writ of execution shall be issued without the party issuing it, or his solicitor, filing a præcipe for that purpose. The præcipe shall contain the title of the action, the reference to the record, the date of the judgment, and of the order, if any, directing the execution to be issued, the names of the parties against whom or of the firms against whose goods the execution is to be issued ; and shall be signed by or on behalf of<sup>1</sup> the solicitor of the party issuing it, or by the party issuing it if he do so in person. The forms in Appendix (E) hereto may be used, with such variations as circumstances may require.

Indorsement of writ.

11. Every writ of execution shall be indorsed with the name and place of abode or office of business of the solicitor actually suing out the same, and when the solicitor actually suing out the writ shall sue out the same as agent for another solicitor, the name and place of abode of such other solicitor shall also be indorsed upon the writ ; and, in case no solicitor shall be employed to issue the writ, then it shall be indorsed with a memorandum expressing that the same has been sued out by the plaintiff or defendant in person, as the case may be, mentioning the city, town, or parish, and also the name of the hamlet, street, and number of the house of such plaintiff's or defendant's residence, if any such there be.

Date of writ.

12. Every writ of execution shall bear date of the day on which it is issued. The forms in Appendix (F.) hereto may be used, with such variations as circumstances may require.

Interest on costs runs from the date of the registrar's allocatur of taxation (see *Schroder v. Clough*, 46 L. J. C. P.

<sup>1</sup> These words were added by r. 17. Rules of June, 1876.

365 ; and *The Jones Brothers*, 37 L. T. N. S. 164 ; 3 Asp. M. C. N. S. 478).

13. In every case of execution the party entitled to execution may levy the poundage, fees, and expenses of execution, over and above the sum recovered.

14. Every writ of execution for the recovery of money shall be indorsed with a direction to the sheriff or other officer or person to whom the writ is directed to levy the money really due and payable and sought to be recovered under the judgment, stating the amount, and also to levy interest thereon, if sought to be recovered, at the rate of £4 per cent. per annum from the time when the judgment was entered up, provided that in cases where there is an agreement between the parties that more than £4 per cent. interest shall be secured by the judgment, then the indorsement may be accordingly to levy the amount of interest so agreed. Indorsement of direction.

The sheriff is the person to whom in an action in the Admiralty Division the writ is directed.

15. Every person to whom any sum of money or any costs shall be payable under a judgment, shall immediately after the time when the judgment was duly entered, be entitled to sue out one or more writ or writs of fieri facias or one or more writ or writs of elegit to enforce payment thereof, subject nevertheless as follows :— Time for taking out writs of execution.

- (a.) If the judgment is for payment within a period therein mentioned, no such writ as aforesaid shall be issued until after the expiration of such period.
- (b.) The Court or judge at the time of giving judgment, or the Court or a judge afterwards, may give leave to issue execution before, or may stay execution until any time after, the expiration of the periods hereinbefore prescribed.

As to stay of execution on appeal, see *post*, O. lviii., r. 16. In one case a stay of execution was granted and the money ordered to be brought into Court and invested in Exchequer Bonds (*The Cybele*, 37 L. T. N. S. 165 ; 3 Asp. M. C. N. S. 478 (481)).

16. A writ of execution if unexecuted shall remain in force for one year only from its issue, unless renewed in the manner hereinafter provided ; but such writ may, at any time before its expiration, Time.



by leave of the Court or a judge, be renewed by the party issuing it, for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ either by being marked with a seal of the Court bearing the date of the day, month, and year of such renewal, or by such party giving a written notice of renewal to the sheriff, signed by the party or his attorney, and bearing the like seal of the Court: and a writ of execution so renewed shall have effect and be entitled to priority according to the time of the original delivery thereof.

17. The production of a writ of execution, or of the notice renewing the same, purporting to be marked with such seal as in the last preceding rule mentioned showing the same to have been renewed, shall be sufficient evidence of its having been no renewed.

18. As between the original parties to a judgment, execution may issue at any time within six years from the recovery of the judgment.

19. Where six years have elapsed since the judgment, or any change has taken place by death or otherwise in the parties entitled or liable to execution, the party alleging himself to be entitled to execution may apply to the Court or a judge for leave to issue execution accordingly. And such Court or judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties shall be tried in any of the ways in which any question in an action may be tried. And in either case such Court or judge may impose such terms, as to costs or otherwise, as shall seem just.

Orders  
equivalent  
to judg-  
ment.

20. Every order of the Court or a judge, whether in an action, cause, or matter, may be enforced in the same manner as a judgment to the same effect.

21. In cases other than those mentioned in rule 18, any person not being a party in an action who obtains any order, or in whose favour any order is made, shall be entitled to enforce obedience to such order by the same process as if he were a party to the action; and any person not being a party in an action against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to such judgment or order as if he were a party to the action.

Relief  
as to  
execution.

22. No proceeding by *audita querela* shall hereafter be used; but any party against whom judgment has been given may apply to the Court or a judge for a stay of execution or other relief against such judgment, upon the ground of facts which have arisen too late to be pleaded; and the Court or judge may give such relief and upon such terms as may be just.

23. Nothing in any of the rules of this order shall take away or curtail any right heretofore existing to enforce or give effect to any judgment or order in any manner or against any person or property whatsoever. Saving rules.

24. Nothing in this order shall affect the order in which writs of execution may be issued.

If a person against whom judgment has gone has the means to pay and will not do so, the Debtors Act, 1869, Proceedings under Debtors Act, 1869. 32 & 33 Vict. c. 62, is applicable.

The following rules were, on March, 1874, made for the purposes of carrying out the provisions of this Act:—

I. All applications to commit to prison under the Debtors Act, 1869, shall, in the first instance, be made to the judge in Court by notice of motion, which shall specify the date and other particulars of the order in respect of the non-obedience to which the application is made, and shall specify the amount due, and be indorsed with the name and address of the solicitor or party suing out the notice of motion; and, when the solicitor actually suing out such notice of motion sues out the same as agent for a solicitor in the country, the name and address of such solicitor in the country shall be indorsed on the notice of motion.

II. The service of the notice of motion shall, whenever it may be practicable, be personal on the debtor; but, if it appears to the judge that reasonable efforts have been made to effect personal service, and either that the notice of motion has come to the knowledge of the debtor, or that he wilfully evades service, an order may be made as if personal service had been effected, upon such terms as to the judge may seem fit.

III. Proof of the means of the debtor shall, whenever practicable, be given by affidavit; but, if it appear to the judge, either before or at the hearing, that a *vivd voce* examination either of the debtor or of any other person or the production of any document is expedient or necessary, an order may be made commanding the attendance of any

such person before the judge, at a time and place to be therein mentioned, for the purpose of being examined on oath touching the matter in question, and an order may be made commanding the production of such documents. The disobedience to any such order shall be deemed a contempt of Court, and be punishable accordingly.

IV. The order of committal may be in the form or to the effect stated in Schedule A. annexed to these rules, and shall, before delivery to the marshal, be indorsed with the particulars required by r. 1.

V. Upon payment of the sum or sums mentioned in the order (including the fees due to the marshal), the debtor shall be entitled to a certificate in the form of Schedule B. annexed to these rules, signed by the solicitor or party actually suing out the order, and attested before an attorney or justice of the peace.

VI. The marshal or his subordinate shall, within two days of the arrest, indorse on the order the true date of such arrest.

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#### *Form of Order of Committal.*

Upon hearing, &c. [*name and surname of debtor and party claiming*], I do order that the said A. B. be, for default of payment of the debt hereinafter mentioned, committed to [*name of prison*] prison for the term of \_\_\_\_\_ weeks from the date of his arrest, including the day of such date, or until he shall pay £ \_\_\_\_\_, being the amount of [*state particulars of debt or liability*], and which the said A. B. was, on the \_\_\_\_\_ day of \_\_\_\_\_, ordered by the Admiralty Division of the High Court of Justice to pay to the said \_\_\_\_\_, together with £ \_\_\_\_\_ for costs of and attending this order; and I do order that the marshal or his substitute do take the said A. B. for the purpose aforesaid.

Dated \_\_\_\_\_

(Signed) \_\_\_\_\_

Judge.

#### *Form of Certificate of Payment.*

I certify that A. B., now in the gaol of \_\_\_\_\_, upon an order

of the Admiralty Division of the High Court of Justice, at the instance of C. D. for non-payment of a debt of £           , has satisfied the said debt, together with the costs mentioned in the said order.

Dated

(Signed)

Witness

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### ORDER XLIII.

#### WRITS OF FIERI FACIAS AND ELEGIT.

1. Writs of *feri facias* and of *elegit* shall have the same force and Writs of effect as the like writs have heretofore had, and shall be executed *fi. fa., &c.* in the same manner in which the like writs have heretofore been executed.

2. Writs of *venditioni exponas*, *distringas nuper vice comitem*, *feri facias de bonis ecclesiasticis*, *sequestrari facias de bonis ecclesiasticis*, and all other writs in aid of a writ of *feri facias* or of *elegit*, may be issued and executed in the same cases and in the same manner as heretofore.

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### ORDER XLIV.

#### ATTACHMENT.

1. A writ of attachment shall have the same effect as a writ of Attachment issued out of the Court of Chancery has heretofore had.

2. No writ of attachment shall be issued without the leave of the Court or a judge, to be applied for on notice to the party against whom the attachment is to be issued.

Costs of moving for an attachment are in the discretion of the Court under O. lv. (*Abud v. Riches*, L. R. 2 Ch. D. 528; 45 L. J. Ch. 649).

## ORDER XLV.

## ATTACHMENT OF DEBTS.

Attach-  
ment of  
debts.

1. Where a judgment is for the recovery by or payment to any person of money, the party entitled to enforce it may apply to the Court or a judge for an order that the judgment debtor be orally examined as to whether any and what debts are owing to him, before an officer of the Court, or such other person as the Court or judge shall appoint; and the Court or judge may make an order for the examination of such judgment debtor, and for the production of any books or documents.

2. The Court or a judge may, upon the *ex parte* application of such judgment creditor, either before or after such oral examination, and upon affidavit by himself or his solicitor stating that judgment has been recovered, and that it is still unsatisfied, and to what amount, and that any other person is indebted to the judgment debtor, and is within the jurisdiction, order that all debts owing or accruing from such third person (hereinafter called the garnishee) to the judgment debtor shall be attached to answer the judgment debt; and, by the same or any subsequent order it may be ordered that the garnishee shall appear before the Court or a judge or an officer of the Court, as such Court or judge shall appoint, to show cause why he should not pay the judgment creditor the debt due from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt.

This procedure has long been in use in the Common Law Divisions: for decisions thereon, see Day's Common Law Procedure Acts, 4th ed., p. 314, *et seq.*

3. Service of an order that debts due or accruing to the judgment debtor shall be attached, or notice thereof to the garnishee, in such manner as the Court or judge shall direct, shall bind such debts in his hands.

4. If the garnishee does not forthwith pay into Court the amount due from him to the judgment debtor, or an amount equal to the judgment debt, and does not dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear upon summons, then the Court or judge may order execution to issue, and it may issue accordingly, without any previous writ or process, to

levy the amount due from such garnishee, or so much thereof as may be sufficient to satisfy the judgment debt.

5. If the garnishee disputes his liability, the Court or judge, instead of making an order that execution shall issue, may order that an issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in an action may be tried or determined.

6. Whenever in proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the Court or judge may order such third person to appear and state the nature and particulars of his claim upon such debt.

7. After hearing the allegations of such third person under such order, and of any person whom by the same or any subsequent order the Court or judge may order to appear, or in case of such third person not appearing when ordered, the Court or judge may order execution to issue to levy the amount due from such garnishee, or any issue or question to be tried or determined according to the preceding rules of this order, and may bar the claim of such third person, or make such other order as such Court or judge shall think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person and to costs as the Court or judge shall think just and reasonable.

See Day's Common Law Procedure Acts, 4th ed., p. 371 ; and see *ante*, p. 233, n.

8. Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid, shall be a valid discharge to him as against the judgment debtor, to the amount paid or levied, although such proceeding may be set aside or the judgment reversed.

9. There shall be kept by the proper officer a debt attachment book, and in such book entries shall be made of the attachment and proceedings thereon, with names, dates, and statements of the amount recovered, and otherwise ; and copies of any entries made therein may be taken by any person upon application to the proper officer.

10. The costs of any application for an attachment of debts, and of any proceedings arising from or incidental to such application, shall be in the discretion of the Court or a judge.

## ORDER XLVI.

## CHARGING OF STOCK OR SHARES, AND DISTINGAS.

Charging  
stock.

1. An order charging stock or shares may be made by any Divisional Court or by any judge, and the proceedings for obtaining such order shall be such as are directed, and the effect shall be such as is provided by 1 & 2 Vict. c. 110, ss. 14 and 15, and 3 & 4 Vict. c. 82, s. 1.

See *In Re* The Blakely Ordnance Co., 35 L. T. N. S. 617; 25 W. R. 111.

2a. Order XLVI., r. 2, is hereby annulled, and no writ of *distringas* shall hereafter be issued under the Act 5 Vict. c. 5, s. 5 (Rule 21, April, 1880). For further rules see Lely & Foulkes' Judicature Acta.

## ORDER XLVII.

## WRIT OF SEQUESTRATION.

Writ of  
sequestra-  
tion.

1. Where any person is by any judgment directed to pay money into Court or to do any other act in a limited time, and after due service of such judgment refuses or neglects to obey the same according to the exigency thereof, the person prosecuting such judgment shall, at the expiration of the time limited for the performance thereof, be entitled, without obtaining any order for that purpose, to issue a writ of sequestration against the estate and effects of such disobedient person. Such writ of sequestration shall have the same effect as a writ of sequestration in Chancery has heretofore had, and the proceeds of such sequestration may be dealt with in the same manner as the proceeds of writs of sequestration have heretofore been dealt with by the Court of Chancery.

See Daniel's Chancery Practice, p. 892; and *The Australia*, Swa. 480, as an example of the practice.

2. No *subpana* for the payment of costs, and, unless by the leave of the Court or a judge, no sequestration to enforce such payment, shall be issued.

## ORDER XLIX.

## WRIT OF DELIVERY.

A writ for delivery of any property other than land or money Writ of may be issued and enforced in the manner heretofore in use in actions delivery. of *detinue* in the Superior Courts of Common Law.

Such a writ might be employed to enforce a judgment for a plaintiff in an action of possession.

## ORDER L.

## CHANGE OF PARTIES BY DEATH, &amp;C.

1. An action shall not become abated by reason of the marriage, Marriage, death, or bankruptcy of any of the parties, if the cause of action survive or continue, and shall not become defective by the assignment, bankruptcy of creation, or devolution of any estate or title *pendente lite*. parties.

2. In case of the marriage, death, or bankruptcy, or devolution of estate by operation of law, of any party to an action, the Court or a judge may, if it be deemed necessary for the complete settlement of all the questions involved in the action, order that the husband, personal representative, trustee, or other successor in interest, if any, of such party be made a party to the action, or be served with notice thereof in such manner and form as hereinafter prescribed, and on such terms as the Court or judge shall think just, and shall make such order for the disposal of the action as may be just.

3. In case of an assignment, creation, or devolution of any estate or title *pendente lite*, the action may be continued by or against the person to or upon whom such estate or title has come or devolved. Assignment of estate.

4. Where by reason of marriage, death, or bankruptcy, or any other event occurring after the commencement of an action, and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the action, it becomes necessary or desirable that any person not already a party to the action should be made a party thereto, or that any person already a party thereto should be made a party thereto in another capacity, an order that the proceedings in the action shall be carried on between the continuing parties to the New parties to, marriage, &c.



action, and such new party or parties, may be obtained *ex parte* on application to the Court or a judge, upon an allegation of such change or transmission of interest or liability, or of such person interested having come into existence.

5. An order so obtained shall, unless the Court or judge shall otherwise direct, be served upon the continuing party or parties to the action, or their solicitors, and also upon each such new party, unless the person making the application be himself the only new party, and the order shall from the time of such service, subject nevertheless to the next two following rules, be binding on the persons served therewith; and every person served therewith who is not already a party to the action shall be bound to enter an appearance thereto within the same time and in the same manner as if he had been served with a writ of summons.

6. Where any person who is under no disability, or under no disability other than coverture, or, being under any disability other than coverture, but having a guardian *ad litem* in the action, shall be served with such order, such person may apply to the Court or a judge to discharge or vary such order at any time within twelve days from the service thereof.

7. Where any person being under any disability other than coverture, and not having had a guardian *ad litem* appointed in the action, is served with any such order, such person may apply to the Court or a judge to discharge or vary such order at any time within twelve days from the appointment of a guardian or guardians *ad litem* for such party, and until such period of twelve days shall have expired such order shall have no force or effect as against such last-mentioned person.

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## ORDER LI.

### TRANSFERS AND CONSOLIDATION.

Transfer  
of actions.

1. Any action or actions may be transferred from one division to another of the High Court, or from one judge to another of the Chancery Division, by an order of the Lord Chancellor, provided that no transfer shall be made from or to any division without the consent of the president of the division.

2. Any action may, at any stage, be transferred from one division to another by an order made by the Court or any judge of the division to which the action is assigned: provided that no such transfer

shall be made without the consent of the president of the division to which the action is proposed to be transferred.

See *Humphreys v. Edwards*, 45 L. J. Ch. 112; and *Hawkins v. Morgan*, 49 L. J. Q. B. 618, where an action for personal injuries was transferred to the Admiralty Division, as the defendants in the common law action had obtained a decree limiting their liability in an Admiralty action; and *The Seaham*, 48 L. J. Ad. 28; 4 Mar. L. C. N. S. 58, where an action was improperly begun in the Admiralty Division. See J. A. 1873, s. 36.

2a. When an order has been made by any judge of the Chancery <sup>Transfer</sup> Division for the winding up of any company under the Companies <sup>under</sup> Acts, 1862 and 1869, or for the administration of the assets of any <sup>winding</sup> testator or intestate, the judge in whose Court such winding up or <sup>up of</sup> administration shall be pending shall have power, without any further consent, to order the transfer to such judge of any action pending in any other division brought or continued by or against such company, or by or against the executors or administrators of the testator or intestate whose assets are being so administered, as the case may be.

3. Any action transferred to the Chancery Division or the Probate <sup>to Chan-</sup> Division shall, by the order directing the transfer, be directed to be <sup>cery Divi-</sup> assigned to one of the judges of such division to be named in the <sup>sion.</sup> order.

4. Actions in any division or divisions may be consolidated by <sup>Consolida-</sup> order of the Court or a judge in the manner heretofore in use in the <sup>tion.</sup> Superior Courts of Common Law.

Rule 4 formulates what has long been the practice in Admiralty actions,—to consolidate them for the purpose of securing defendants from the payment of the larger costs which would ensue if the several actions were separately prosecuted. But, to afford ground for such consolidation, the actions must depend on precisely the same facts, though, as regards salvage actions, the Court has a somewhat wider power (*The William Hutt*, Lush. 25). Lately, if either of the plaintiffs object, the Court has been less willing to make an order for consolidation; but, if the objection is unreasonable, the party refusing will either be condemned in costs at the hearing or not receive them (*The Jacob Land-*

*strom*, L. R. 4 P. D. 191 ; 4 Asp. M. C. N. S. 58): and for an example of a plaintiff receiving no costs (*The Longford*, L. R. 6 P. D. 60 ; 50 L. J. Ad. 28). The Court, after having consolidated, can sever the actions if necessary (*The William Hutt*, ante), and such consolidation may take place either on the application of the plaintiffs or defendants (*The Melpomene*, L. R. 4 Ad. 129 ; 29 L. T. N. S. 405). An order for consolidation will be made on summons by the registrar. It is usual to give the conduct of the action to the plaintiff in one of the actions, with leave to the other plaintiff to deliver a separate statement of claim, and to appear at the hearing by one counsel, without prejudice to any order which the Court may make at the hearing as to the costs of such separate claim and counsel. It is usual to apply to the Court by motion to dis sever consolidated actions.

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## ORDER LII.

### INTERLOCUTORY ORDERS AS TO MANDAMUS, INJUNCTIONS, OR INTERIM PRESERVATION OF PROPERTY, &c.

Orders for  
preserva-  
tion of  
property,

1. When by any contract a *prima facie* case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the Court or a judge may make an order for the preservation or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be brought into Court or otherwise secured.

by sale,  
&c.

2. It shall be lawful for the Court or a judge, on the application of any party to any action, to make any order for the sale, by any person or persons named in such order, and in such manner and on such terms as to the Court or judge may seem desirable, of any goods, wares, or merchandise which may be of a perishable nature or likely to injure from keeping, or which for any other just and sufficient reason it may be desirable to have sold at once.

3. It shall be lawful for the Court or a judge, upon the application of any party to an action, and upon such terms as may seem just, to make any order for the detention, preservation, or inspection

of any property being the subject of such action, and for all or any of the purposes aforesaid, to authorize any person or persons to enter upon or into any land or building in the possession of any party to such action, and for all or any of the purposes aforesaid to authorize any samples to be taken or any observation to be made or experiment to be tried which may seem necessary or expedient for the purpose of obtaining full information or evidence.

4. An application for an order under section 25, sub-section 8, of the Act, or under Rules 2 or 3 of this Order, may be made to the Court or a judge by any party. If the application be by the plaintiff for an order under the said sub-section 8, it may be made either *ex parte* or with notice, and if for an order under the said Rules 2 or 3 of this Order, it may be made after notice to the defendant at any time after the issue of the writ of summons, and, if it be by any other party, then on notice to the plaintiff, and at any time after appearance by the party making the application.

5. An application for an order under Rule 1 may be made by the plaintiff at any time after his right thereto appears from the pleadings; or, if there be no pleadings, is made to appear by affidavit or otherwise to the satisfaction of the Court or a judge.

6. Where an action is brought to recover, or a defendant in his statement of defence seeks by way of counter-claim to recover specific property other than land, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court or a judge may, at any time after such last-mentioned claim appears from the pleadings, or, if there be no pleadings, by affidavit or otherwise to the satisfaction of such Court or judge, order that the party claiming to recover the property be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as such Court or judge may direct, and that, upon such payment into Court being made, the property claimed be given up to the party claiming it.

8. No writ of injunction shall be issued. An injunction shall be by a judgment or order, and any such judgment or order shall have the effect which a writ of injunction previously had.

R. 1 is of little importance as to Admiralty matters; <sup>Remarks</sup> it is really contained in r. 3. Section 25, sub-s. 8, of the <sup>on this</sup> Order. J. A., 1875, should be read with these rules.

For an example of a sale under r. 2, see *The Kathleen* (L. R. 4 Ad. 269; 31 L. T. N. S. 204), of a cargo from a derelict ship; and for example of procedure under r. 3, see *The Horlock* (36 L. T. N. S. 622; L. R. 2 P. D. 243, 250), where a defendant was restrained from dealing with the shares in a ship, and the Registrar of Shipping from registering any transfer *pendente lite*. If a vessel is sold against which several salvors are bringing actions, the salvor who first brings his action will generally be allowed to have the conduct of the sale.

R. 6 may be useful in some cases, as, where a ship is claimed by a mortgagor, and a mortgagee asserts that he has a lien on it.

In some cases, where a ship or cargo is deteriorating in value, the Court, in analogy to these proceedings, has ordered it to be released on terms before it has been appraised (*The Glasgow Packet*, 8 Jur. 67).

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### ORDER LIII.

#### MOTIONS AND OTHER APPLICATIONS.

**Motions.** 1. Where by these rules any application is authorized to be made to the Court or a judge in an action, such application, if made to a judge in Court, shall be made by motion.<sup>1</sup>

2. No rule or order to show cause shall be granted in any action, except in the cases in which an application for such rule or order is expressly authorized by these rules.

**Notice of motion.** 3. Except where by the practice existing at the time of the passing of the said Act any order or rule has heretofore been made *ex parte* absolute in the first instance, and except where by these rules it is otherwise provided, and except where the motion is for a rule to show cause only, no motion shall be made without previous notice to the parties affected thereby. But the Court or judge, if satisfied that the

<sup>1</sup> By A. C. R., 1859, r. 141, "No motion shall be made to the judge in Court save by counsel, or by a party conducting his cause in person."

delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order *ex parte* upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court or judge may think just; and any party affected by such order may move to set it aside.

It is impossible to state more definitely what is a matter which will entitle a party to move *ex parte*.

If a party gives notice of motion and does not appear, and the opposite party is in attendance to show cause, the former will have to pay the costs of the appearance of the latter (*Berry v. Exchange Co.*, 1 Q. B. D. 77; 45 L. J. Q. B. 224).

4. Unless the Court or judge give special leave to the contrary, Time there must be at least two clear days between the service of a notice of motion and the day named in the notice for hearing the motion.

They must be two clear days (*Daubney v. Shuttleworth*, 1 Ex. D. 53; 45 L. J. Ex. 177). By leave in urgent cases short notice of motion is allowed.

5. If on the hearing of a motion or other application the Court or judge shall be of opinion that any person to whom notice has not been given ought to have or to have had such notice, the Court or judge may either dismiss the motion or application, or adjourn the hearing thereof, in order that such notice may be given, upon such terms, if any, as the Court or judge may think fit to impose. Notice to person to whom it has not been given.

6. The hearing of any motion or application may from time to time be adjourned upon such terms, if any, as the Court or judge shall think fit. Adjournment.

7. The plaintiff shall, without any special leave, be at liberty to serve any notice of motion or other notice, or any petition or summons, upon any defendant who, having been duly served with a writ of summons to appear in the action, has not appeared within the time limited for that purpose. Service.

8. The plaintiff may, by leave of the Court or a judge, to be obtained *ex parte*, serve any notice of motion upon any defendant along with the writ of summons, or at any time after service of the writ of summons and before the time limited for the appearance of such defendant.

If a party appears to consent to a motion who would

not have been prejudiced by it, he will not be allowed his costs (*The Achilles*, 25 L. T. N. S. 605; 1 Mar. L. C. N. S. 165; *The Albion*, 6 L. T. 166). He should communicate the fact that he consents to the solicitor of the party who makes the motion; and the counsel who moves will state this, if necessary, to the Court. If there are any particular terms upon which only a party will consent, it will be proper for him to appear by counsel on the motion.

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### ORDER LIV.

#### APPLICATION AT CHAMBERS.

Summons  
in cham-  
bers.

1. Every application at chambers authorized by these rules shall be made in a summary way by summons.

This rule is absolute as to the procedure in chambers; and the practice of moving in chambers is now obsolete.

Every summons is prepared by the solicitor, and must be sealed in the registry.

The following rules, A. C. R. 1859, must be read in connection with this practice:—

Rule 146. "If the solicitor summoned do not appear at the time named in the summons, the cause shall be called on, and the judge (or registrar) thereupon shall make such order as to him shall seem fit."

Rule 147. "If the solicitor by whom the summons has been taken out do not appear to support the same at the time named in the summons, the judge may, on the application of the solicitor summoned, dismiss the summons with costs."

Rule 149. "Either solicitor may employ counsel at the hearing of any summons before the judge in chambers if notice thereof has been given to the adverse solicitor two days before the hearing of the summons."

No præcipe need be left at the registry when a summons is issued, but a duplicate summons is used in its place.

2. In the Admiralty Division, a registrar may transact all such **Matters** business and exercise all such authority and jurisdiction in respect of **not within** the same as under the Act, or the schedule thereto, or these rules, may **the jurisdiction of** be transacted or exercised by a judge at chambers, except in respect **of the registrar.** of the following proceedings and matters; that is to say,—

All matters relating to criminal proceedings or to the liberty of the subject :

The removal of actions from one division or judge to another division or judge :

The settlement of issues, except by consent :

Discovery, whether of documents or otherwise, and inspection, except by consent :

Appeals from district registrars :

Interpleader other than such matters arising in interpleader as relate to practice only, except by consent :

Prohibitions :

Injunctions and other orders under sub-section 8 of section 25 of the Act, or under Order LII., Rules 1, 2, and 3 respectively :

Awarding of costs, other than the costs of any proceeding before such master :

Reviewing taxation of costs :

Charging orders on stock funds, annuities, or share of dividends or annual produce thereof.

It follows from this rule that any other matter than those enumerated above may be brought before the registrar, for by J. A., 1873, section 39, the jurisdiction of the judge in chambers is almost unlimited.

2a. The authority and jurisdiction of the district registrar, or of a master of the Queen's Bench, Common Pleas, or Exchequer Divisions, shall not extend to granting leave for service out of the jurisdiction of a writ of summons or notice of a writ of summons.

3. If any matter appears to the master proper for the decision of a judge, the master may refer the same to a judge, and the judge may either dispose of the matter or refer the same back to the master with such directions as he may think fit.

4. Any person affected by any order or decision of a master (registrar) may appeal therefrom to a judge at chambers. Such appeal **Appeal from registrar.** shall be by summons, within four days after the decision complained of, or such further time as may be allowed by a judge or master.

5. An appeal from a master's decision shall be no stay of proceeding unless so ordered by a judge or master.



At the hearing of a summons before the judge, he will, if it raises a difficult point, sometimes adjourn it for hearing into Court.

Rule 4 seems to make the appeal and the judgment necessarily in chambers. Rule 6, as to appeal to Court by motion, applies only to the Common Law Divisions, and is not printed here.

As to appeal from district registrar, see O. xxxv., r. 7.

As to costs on summons, see App. II., Rules of Supreme Court (Costs), special allowances and general provisions.

A certificate for counsel should be asked for.

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## ORDER LV.

### COSTS.

**Costs.** 1. Subject to the provisions of the Act, the costs of and incident to all proceedings in the High Court shall be in the discretion of the Court.

2. In any cause or matter, in which security for costs is required, the security shall be of such amount, and be given at such time or times, and in such manner or form, as the Court or a judge shall direct.

Although, as above stated, costs are in the discretion of the Court, there are certain rules defined with more or less precision by which the Court is ordinarily governed in the exercise of its discretion.

**Salvage.** In salvage actions costs usually follow the event (*The Lady Egidia*, Lush. 513; *The Edward Hawkins*, *ib.* 515; 15 Moo. P. C. 586); but under special circumstances unsuccessful plaintiffs have been allowed all or some part of their costs, as, for the purpose of encouraging mariners to rescue property (*The India*, 1 W. Rob. 406; *The Princess Alice*, 3 W. Rob. 143); or, though unsuccessful, have not been condemned in costs, as, when they were summoned

by an ambiguous signal (*The Little Joe*, Lush. 88), or when there were some meritorious acts on their part (*The Martha*, Swa. 489). Again, no order is sometimes made as to costs when a plaintiff is unsuccessful by a suit being dismissed for want of jurisdiction (*The Willem III.*, L. R. 3 Ad. 487; 25 L. T. N. S. 386); when an agreement for salvage has been set aside, but some reward given (*The Medina*, L. R. 2 P. D. 5; *The Silesia*, L. R. 5 P. D. 177; 43 L. T. 319); when the contract of service is held to prevent a salvage reward (*The Ganges*, L. R. 2 Ad. 370; 38 L. J. Ad. 61). Salvors who have substantiated their claim are sometimes deprived of all or part of their costs in consequence of improper conduct, as, by denying the services of co-salvors (*The Bartley*, Swa. 198; *The Glasgow Packet*, 2 W. Rob. 306), or not doing all they might have done (*The Scout*, L. R. 3 Ad. 512; 41 L. J. Ad. 42). To avoid difficulties as to apportionment where there are several sets of salvors, one sum *nomine expensarum* is given to them in place of costs (*The Enterprise*, 2 Hagg. 178, n.; *The Kathleen*, 31 L. T. N. S. 204 (210)); and in a case where the defendants were condemned to pay one set of costs in respect of two actions, they were ordered to be apportioned according to the amount of the bills of costs (*The Pasithea*, L. R. 5 P. D. 5). Out-port charges are to be made up in one bill with the general costs of the action (*The City of Brussels*, L. R. 4 Ad. 194; 42 L. J. Ad. 72).

When an action is successfully brought against ship, freight, and cargo, the costs must be equally divided (*The Marquis of Huntley*, 3 Hagg. 246; *The Peace*, Swa. 115); but, if any party is improperly brought into the action, he will receive his costs (*The Cargo ex Sarpedon*, L. R. 3 P. D. 28; 37 L. T. 505).

Under 23 & 24 Vict. c. 127, and by general principles of Equity, a solicitor has a charge upon the property recovered or preserved through his instrumentality in priority to claims which accrue after the institution of

the suit (*The Philippine*, L. R. 1 Ad. 309; *The Heinrich*, L. R. 3 Ad. 505; 41 L. J. Ad. 68).

- Towage.** Costs in towage actions usually follow the event (*The Robert Pow*, Br. & L. 99; 32 L. J. Ad. 64); but circumstances may arise, as, carelessness on the part of the towed and towing vessel, when each party will have to bear their own costs (*The Energy*, L. R. 3 Ad. 48; 39 L. J. Ad. 25).
- Damage.** Costs in actions of damage, as a rule, follow the event; thus, if damage is occasioned by the wrongful act of the ship complained of, the plaintiff will be entitled to costs; and again, if damage is entirely the result of the negligence of the complaining ship, that vessel will be condemned in costs (*The Albert Edward*, 44 L. J. Ad. 49; 24 W. R. 179).
- Inevitable accident.** If the damage is caused by inevitable accident, the general practice is that each side must pay its own costs (*The Marpesia*, L. R. 4 P. C. 212; *The Buckhurst*, L. R. 6 P. D. 152); but, if the plaintiff has been unduly rash in bringing the action, and had good reason to think that the collision was the result of an accident, he will be ordered to pay the costs (*The London*, Br. & L. 82; 9 L. T. N. S. 348). Again, if both parties are to blame, they must each pay their own costs (*The Washington*, 5 Jur. 1067; *The Telegraph*, 1 Spk. 427; *The Lake St. Clair*, 36 L. T. N. S. 155 (160)). But exceptional circumstances will produce exceptions to the above rules, such as, misconduct on the part of those who are successful or not to blame (*The Celt*, 3 Hagg. 328), or the novelty of the point decided by the judgment of the Court (*The Diana*, Lush. 539; 32 L. J. Ad. 57).
- Both to blame.** The rule as to costs when the defence of compulsory pilotage is set up is that where this is the sole ground of defence, and the defendants succeed upon it, they are entitled to their costs (*The Juno*, L. R. 1 P. D. 135; 34 L. T. N. S. 741); but that, where other grounds are relied on in addition to that of compulsory pilotage, and the defence is successful on this point alone, then each party bears his own costs (*The Mathew Cay*, L. R. 5 P. D. 49; 49 L. J. Ad. 47;
- Compulsory pilotage.**

*The Daoiz*, 37 L. T. N. S. 137; 3 Mar. L. C. N. S. 477; *The Schwan*, L. R. 4 Ad. 187; 30 L. T. N. S. 537); and this rule is followed in the Court of Appeal (*The Daoiz*, ante), but has been held not to apply to the other Divisions of the High Court (General Steam Navigation Co. v. London and Edinburgh Co., L. R. 2 Ex. D. 467)

No order can be made against the Crown for the payment of costs, but as a matter of grace the Crown in practice abides by the usual rules (*The Leda*, 32 L. T. N. S. 58; Br. & L. 19). When, as is usual, the captain of the ship is the nominal defendant, costs are given as if he were an ordinary defendant (*The Swallow*, Lush. 32).

In actions for damage to cargo, the costs, as a rule, follow the event (e.g., *The Heinrich*, L. R. 3 Ad. 424; but, if an action is brought by the owner of cargo on one ship against another for damage by collision, and both are held to blame, no order will, as a rule, be made as to costs (*The City of Manchester*, L. R. 5 P. D. 221; 49 L. J. Ad. 81).

In an action for limitation of liability the plaintiff usually has to pay the costs; but, if the defendants raise issues and fail upon them, the costs of such issues will have to be borne by them (*The Empusa*, L. R. 5 P. D. 6; 48 L. J. Ad. 36).

When the claim is pronounced for, costs usually follow the event (*The Minstrel*, 2 Hagg. 40; *The Limerick*, L. R. 1 P. D. 292; 45 L. J. Ad. 97); but circumstances may arise, such as, exorbitant claims, which will cause the plaintiff to be condemned in costs (*The William*, Lush. 199), or owners may be equally to blame, as, in striking an unreasonable amount off a claim, when each party must pay their own costs (*The Lemuella*, Lush. 147; 30 L. J. Ad. 1). Again, a master may be entitled to payment, yet his conduct may have fully justified a defence to the action, when each party will be ordered to pay their own costs (*The Roebuck*, 31 L. T. N. S. 274; 2 Mar. L. C. N. S. 387). If a master does not furnish accounts before bringing an

desire the judgment below to be varied, and the appeal is dismissed, the respondents will have to pay any costs occasioned by their notice (*The Lauretta*, L. R. 4 P. D. 25 ; 48 L. J. Ad. 55). If the Court of Appeal varies the decree of the Court below, as, by finding that the collision was the result of an inevitable accident, or that both ships were to blame, each party will have to bear his costs of the litigation in both Courts (*The Milanese*, 43 L. T. N. S. 107 ; *The Corinna*, 35 L. T. N. S. 781 ; 3 Mar. L. C. N. S. 307 ; *The City of Cambridge*, *ib.*).

Security  
for costs.

When the plaintiff resides out of the jurisdiction of the High Court, he may be required to give security for costs (*The Sophie*, 1 W. Rob. 326 ; *The D. H. Peri*, Lush. 543), although at the time of the application he is within the jurisdiction ; but this practice is generally confined in wages actions to those by a master (*The Franz et Elise*, Lush. 377 ; 5 L. T. N. S. 290 ; *The Zufall*, 44 L. J. Ad. 16 ; 32 L. T. N. S. 571 ; *The Don Ricardo*, L. R. 5 P. D. 121 ; 49 L. J. Ad. 28). And, where the defendant brings a counterclaim, he may be compelled, unless the ship is under arrest and is of sufficient value to cover the claim and costs, or sufficient bail has been given, to give security for the costs of the whole action, not only for the costs caused by such counterclaim (*The Julia Fisher*, L. R. 2 P. D. 115 ; 36 L. T. N. S. 259). The procedure by counterclaim having taken the place of cross actions in causes of damage, the practice as to security for costs formulated by A. C. Act, 1861, s. 34, in cases when the ship of the plaintiff had not been arrested, whereby the plaintiff was obliged to give security, is applicable to cases of counterclaim (*The Charkieh*, L. R. 4 Ad. 120 ; 29 L. T. N. S. 404), and he must give security when called (*The Julia Fisher*, *supra* ; *The Carnarvon Castle*, 38 L. T. N. S. 736 ; 3 Asp. M. C. N. S. 607) ; but this does not apply to owners of cargo who may have joined with the owner of the ship as plaintiffs. And a defendant who claims a

limitation of his liability by petition is, as regards security for costs, in the same position as an ordinary plaintiff (*The Wild Ranger*, Lush. 553; 5 L. T. N. S. 164).

An order for security for costs will also be made in cases where the plaintiff may be within the jurisdiction, when there are some exceptional circumstances to justify such an order, as the recent insolvency of the claimant (*The Lake Megantic*, 36 L. T. N. S. 183; 3 Mar. L. C. N. S. 382), for, in this matter the Admiralty Division acts upon principles long established in the Common Law Courts; moreover, the rule as to foreigners has been applied to foreign Governments (*The Beatrice*, 36 L. J. Ad. 10).

The amount of the security depends on the circumstances of each particular case, as, the importance of the action, the character of the parties, and so forth. Thus, in an action for wages, when the plaintiffs are foreigners in England, it will be a moderate sum (*The Zufall, ante*). The application should be made as early as possible in an action (*The Volant*, 1 W. Rob. 384); and proceedings will be stayed until such security as is ordered is given. If the order is not complied with within a reasonable time, the claim will be dismissed (*The Julia Fisher*, L. R. 2 P. D. 115; 36 L. T. N. S. 259). The money must be paid into the Bank of England, to the account of the registrar, upon a receivable order, which can be obtained at the registry, or, if bail is given, the practice as set out at p. 154 is applicable. The rule as to security is not applicable to damages for which security is not required (*The Mary or Alexandra*, L. R. 1 Ad. 335; 16 L. T. N. S. 98). As to giving bond, see R. 3, p. 264.

It may be convenient to notice here the practice as to security for costs in the Court of Appeal. By O. lviii, r. 15, security may be required under "special circumstances." The Court of Appeal has decided that there must be really unusual circumstances to induce them to grant the application, and that they will, as far as possible, follow the

In the  
Court of  
Appeal.

practice of the Privy Council (*The Victoria*, L. R. 1 P. D. 281; 34 L. T. N. S. 391). As to "unusual circumstances," see *infra*. Security was required by the Privy Council when the appellant resided out of the jurisdiction of the Court (Privy Council Rules, No. 15; Macpherson, P. C. Prac., 2nd ed.; App., p. 121): but the practice as to amount and time under this rule would not now be in force, since, by O. lviii., r. 15, these are in the discretion of the Court. The time in which security must be given would seem to be a reasonable one, otherwise the appeal will be dismissed on motion by the respondent (*Polini v. Gray*, L. R. 11 Ch. D. 741; 49 L. J. Ch. 41; *Judd v. Green*, L. R. 4 Ch. D. 784; 46 L. J. Ch. 257). When an appellant is clearly obliged to give security, he ought to do so upon being applied to, and a reasonable offer should be entertained by the respondent. If an application is made to the Court, it will consider which party has made the application necessary, and deal with the costs accordingly (*The Constantine*, L. R. 4 P. D. 156; 24 W. R. 747).

In an appeal from a division other than Admiralty, poverty and voluminous evidence have been considered special circumstances (*Wilson v. Smith*, L. R. 2 Ch. D. 67; 45 L. J. Ch. 692); in the Admiralty Division an appellant having been a bankrupt, and being at the time a liquidating debtor (*The Constantine*, L. R. 4 P. D. 156; 27 L. R. 747). Moreover, security must be only for future costs certain to be incurred, not for those which already exist or may possibly arise (*Grant v. The Banque Franco-Egyptienne*, L. R. 1 C. P. D. 143; 34 L. T. N. S. 470; L. R. 2 C. P. D. 430). As to time and mode of application, see O. lviii., r. 15.

Costs in actions in County Courts' jurisdiction.

In actions within the County Court limits, unless the judge makes an order to the contrary, the plaintiff will obtain his costs (see *ante*, p. 15). But, in such a case it is usual for the defendant to apply for an order depriving the plaintiff of them, and the matter is then one wholly for the

discretion of the judge. For examples of costs given before the Judicature Acts when a certificate was required, see *The Minnehaha*, Lush 335; *The Fenix*, Swa. 13; *The Beaumaris Castle*, 40 L. J. Ad. 41; 24 L. T. N. S. 448. It rests on the plaintiff to show some reason for proceeding in the High and not in an Inferior Court when he may do so.

As regards the taxation of costs, the rules 119, 120, and 121, from A. C. R., 1859 (see *post*, App. III.), describe the initial proceedings, after which they continue in the manner described in the Rules of the Supreme Court (Costs); see App. II. Taxation  
of costs.

When costs have been taxed, an application for the usual order for payment may be made to the judge, and it, as part of the judgment, may be enforced in the same way (see O. xlii., *et seq.*).

Costs bear interest from the signing of the allocatur, since 1 & 2 Vict. c. 110, s. 17, is, by J. A., 1876, s. 76, applicable to the Admiralty Division (*The Jones Brothers*, 37 L. T. N. S. 164; 3 Mar. L. C. N. S. 478; see also *Schroder v. Clough*, 46 L. J. C. P. 365).

Retainers, both to the leading and junior counsel, are usually allowed on taxation, and refreshers if a case takes more than one day (*The Neuera*, L. R. 5 P. D. 118; 42 L. T. N. S. 743).

On a taxation of costs between solicitor and client, items rendered necessary by the negligence of the solicitor were allowed, on the ground that the negligence complained of would be cause for an action of negligence against the solicitor (*The Pappa de Rossie*, L. R. 3 P. D. 160).

With regard to appeals against the taxation of bills of costs, see Rules of Supreme Court (Costs), rules 30—33, Appeals  
against  
taxation. App. II.

The judge is very reluctant to interfere with the discretion of the registrar in the matter of taxation, the guiding principle in which is, that the party who has been successful in the action shall be indemnified for all expenses



to which he has *necessarily* been put (*The Karla*. Br. & L. 367).

3. Where a bond is to be given as security for costs, it shall, unless the Court or a Judge otherwise directs, be given to the party or person requiring the security, and not to an officer of the Court.

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## ORDER LVL

### NOTICES AND PAPER, ETC.

- Notices.** 1. All notices required by these rules shall be in writing, unless expressly authorised by a Court or judge to be given orally.
- The next three rules from A. C. R., 1859, should be read with the above:—
- Service.** 151. "The service of a notice by a solicitor may be effected by his clerk or agent, and if required to be verified shall be verified by affidavit."
152. "Notices required to be left in the registry shall be signed by the solicitor, or his clerk for him."
153. "Notices sent from the registry may be sent by post, and the day on which the notice is posted shall be considered as the day of the service thereof, and the posting thereof shall be a sufficient service."
- Filing documents.** 156. No document shall be filed, unless properly indorsed and stamped.
157. No document of which a copy is required to be served on the adverse solicitor shall be filed in the registry without a certificate indorsed thereon, signed by the solicitor or by his clerk for him, to the effect that the document has been duly served.
159. If a solicitor, save by permission of the judge or registrar, do not file or serve on the adverse solicitor, as may be required of him any document within the time allowed by any of these rules, the adverse solicitor shall not be compelled to receive the same, save by order of the judge.
- Minutes.** 160. On filing any instrument or document, the solicitor shall state, in writing, on a printed form to be obtained in the registry, called a minute, the nature of the instrument or document filed, and the date of the filing thereof.
161. A record of all minutes, and of all causes instituted and appearances entered, and of all decrees and orders of the Court, shall be entered in a book to be kept in the registry, called the "Minute Book."

The cause book, Order V., R. 8, p. 109, has, for public purposes, superseded the minute book, which is now only used for the convenience of the officials of the registry.

180. Other persons may inspect the Court books on payment of Searches. the proper fee.

181. No person, except a party or solicitor in the cause or a clerk of the latter, shall be allowed, save by permission of the judge, to inspect any of the documents in a pending cause.

“Other,” that is, than the parties and solicitors in a cause who are charged the fees for searches set out in the list of fees, see App. II.

3. Proceedings required to be printed shall be printed on cream Paper. wove machine drawing foolscap folio paper, 19 lbs. per mill ream, or thereabouts, in pica type leaded, with an inner margin about three quarters of an inch wide, and an outer margin about two inches and a half wide.

4. Any affidavit may be sworn to either in print or in manuscript, Affidavits. or partly in print and partly in manuscript.

See Rules of Supreme Court (Costs), Orders i., iii., v., App. II.

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## ORDER LVII.

### TIME.

1. Where by these rules, or by any judgment or order given or Months. made after the commencement of the Act, time for doing any act or taking any proceeding is limited by months, not expressed to be lunar months, such time shall be computed by calendar months.

2. Where any limited time less than six days from or after any Days not date or event is appointed or allowed for doing any act or taking any reckoned. proceeding, Sunday, Christmas Day, and Good Friday shall not be reckoned in the computation of such limited time.

3. Where the time for doing any act or taking any proceeding Sundays. expires on a Sunday, or other day on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of

doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open.

*Long  
vacation.*

4. No pleadings shall be amended or delivered in the long vacation, unless directed by a Court or a judge.

5. The time of the long vacation shall not be reckoned in the computation of the times appointed or allowed by these rules for filing, amending, or delivering any pleading, unless otherwise directed by a Court or a judge.

*Enlarging  
and  
abridging  
times.*

6. A Court or a judge shall have power to enlarge or abridge the time appointed by these rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed.

6a. The time of delivering or amending any pleading may be enlarged by consent in writing, without application to the Court or a judge.

*Motion to  
fix early  
day for  
trial.*

7. In Admiralty actions the Court or a judge shall have power at any stage of the proceedings in such action, upon a motion or summons by either party, calling upon the other party to show cause why the trial of such action should not take place on an early day to be appointed by the Court or a judge, to appoint that such trial shall take place on any day or within any time which to the Court or judge shall seem fit; and for such purpose the Court or judge shall have power, upon such motion or summons, to dispense with the giving of notice of trial, or to abridge the time or times appointed by these rules for giving such notice, for the delivery of pleadings, or for doing any other act or taking any other proceeding in the action, upon such terms (if any) as the nature of the case may require.

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## ORDER LVIII.

### APPEALS.

*Appeals.*

2. All appeals to the Court of Appeal shall be by way of re-hearing, and shall be brought by notice of motion in a summary way, and no petition, case, or other formal proceeding other than such notice of motion shall be necessary. The appellant may by the notice of motion appeal from the whole or any part of any judgment or order, and the notice of motion shall state whether the

whole or part only of such judgment or order is complained of, and in the latter case shall specify such part.

3. The notice of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Court of Appeal may direct notice of the appeal to be served on all or any parties to the action or other proceeding, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may seem just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties. Any notice of appeal may be amended at any time as to the Court of Appeal may seem fit.

4. Notice of appeal from any judgment, whether final or interlocutory, shall be a fourteen days' notice, and notice of appeal from any interlocutory order shall be a four days' notice.

5. The Court of Appeal shall have all the powers and duties as to amendment and otherwise of the Court of First Instance, together with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in Court, by affidavit, or by deposition taken before an examiner or commissioner. Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a judgment after trial or hearing of any cause or matter upon the merits, such further evidence (save as to matters subsequent as aforesaid) shall be admitted on special grounds only, and not without special leave of the Court. The Court of Appeal shall have power to give any judgment and make any order which ought to have been made, and to make such further or other order as the case may require. The powers aforesaid may be exercised by the said Court, notwithstanding that the notice of appeal may be that part only of the decision may be reversed or varied, and such powers may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision. The Court of Appeal shall have power to make such order as to the whole or any part of the costs of the appeal as may seem just.

The Court of Appeal will rarely allow the admission of further evidence unless very strong reasons can be shown in favour of the application. Where no application for an adjournment of the hearing below was made

Notice of appeal.

Amendment and further evidence.

Admission of further evidence.

for the purpose of obtaining the new evidence if procurable, or if the Court below in effect had the facts to be proved by the new evidence before it, then the further evidence will not be admitted (*The Scindia*, L. R. 1 P. C. 241; 4 Moo. P. C. N. S. 84. Compare with this case *Bigsby v. Dickinson*, L. R. 4 Ch. D. 24; 46 L. J. Ch. 280, where the Court acted upon this principle). As to costs, see *ante*, O. lv., r. 1. No appeal lies from a refusal by the judge of the Admiralty Division to allow an appeal from a County Court to the High Court under 31 & 32 Vict. c. 71, s. 27 (*The Amstel*, L. R. 2 P. D. 186; 47 L. J. Ad. 11).

**Motion by way of cross appeal.** 6. It shall not, under any circumstances, be necessary for a respondent to give notice of motion by way of cross appeal; but, if a respondent intends, upon the hearing of the appeal, to contend that the decision of the Court below should be varied, he shall, within the time specified in the next rule, or such time as may be prescribed by special order, give notice of such intention to any parties who may be affected by such contention. The omission to give such notice shall not diminish the powers conferred by the Act upon the Court of Appeal, but may, in the discretion of the Court, be ground for an adjournment of the appeal, or for a special order as to costs.

**As to costs below.** This applies to an application to vary the order of the Court below as to costs, when the respondent is otherwise satisfied with the decree (*Harris v. Aaron*, L. R. 4 Ch. D. 749; 25 W. R. 353).

**Time of notice.** 7. Subject to any special order which may be made, notice by a respondent under the last preceding rule shall in the case of any appeal from a final judgment be an eight days' notice, and in the case of an appeal from an interlocutory order a two days' notice.

**Entry of appeal.** 8. The party appealing from a judgment or order shall produce to the proper officer of the Court of Appeal the judgment or order or an office copy thereof, and shall leave with him a copy of the notice of appeal to be filed; and such officer shall thereupon set down the appeal by entering the same in the proper list of appeals, and it shall come on to be heard according to its order in such list, unless the Court of Appeal or a judge thereof shall otherwise direct, but so as not to come into the paper for hearing before the day named in the notice of appeal.

The proper officer in this case is the registrar of the Admiralty Division, who is the registrar in Admiralty appeals of the Appeal Court (J. A., 1875, s. 8, and O. lx.).

10. Where an *ex parte* application has been refused by the Court below, an application for a similar purpose may be made to the Court of Appeal *ex parte* within four days from the date of such refusal, or within such enlarged time as a judge of the Court below or of the Appeal Court may allow. *Ex parte application.*

11. When any question of fact is involved in an appeal, the evidence taken in the Court below bearing on such question shall, subject to any special order, be brought before the Court of Appeal as follows: *Evidence from Court below.*

- (a). As to any evidence taken by affidavit, by the production of printed copies of such of the affidavits as have been printed, and office copies of such of them as have not been printed.
- (b). As to any evidence given orally, by the production of a copy of the judge's notes, or such other materials as the Court may deem expedient.

The rule as to office copies has been relaxed, when the affidavits were very voluminous, to save expense (*Sickles v. Morris*, 45 L. J. C. P. 148; 24 W. R. 102; and see *Crawford v. Hornsey Steam Company*, 34 L. T. N. S. 923; 24 W. R. 422). The official shorthand writer's notes are usually directed to be printed for the use of the Court of Appeal without an order from a judge.

12. Where evidence has not been printed in the Court below, the Court below or a judge thereof, or the Court of Appeal or a judge thereof, may order the whole or any part thereof to be printed for the purpose of the appeal. Any party printing evidence for the purpose of an appeal without such order shall bear the costs thereof, unless the Court of Appeal or a judge thereof shall otherwise order. *Printing evidence.*

Where a party has had notes taken of the evidence, and both parties used them on appeal without leave, since they were absolutely necessary, the costs of the printing were allowed (*Bigsby v. Dickinson*, L. R. 4 Ch. D. 24; 46 L. J. Ch. 280).

13. If, upon the hearing of an appeal, a question arises as to the ruling or direction of the judge to a jury or assessors, the Court shall

nave regard to verified notes or other evidence, and to such other materials as the Court may deem expedient.

Inter-  
locutory  
orders.

14. No interlocutory order or rule from which there has been no appeal shall operate so as to bar or prejudice the Court of Appeal from giving decision upon the appeal as may seem just.

Time for  
appealing.

15. No appeal from any interlocutory order shall, except by special leave of the Court of Appeal, be brought after the expiration of twenty-one days, and no other appeal shall, except by such leave, be brought after the expiration of one year. The said respective periods shall be calculated from the time at which the judgment or order is signed, entered, or otherwise perfected, or, in the case of the refusal of an application, from the date of such refusal. Such deposit or other security for the costs to be occasioned by any appeal shall be made or given as may be directed under special circumstances by the Court of Appeal.

The notice of appeal must be served within twenty-one days, whether the offices be open or shut (*Ex parte Saffery*, L. R. 5 Ch. D. 365 ; 36 L. T. N. S. 532).

Security  
for costs.

As to circumstances under which security for costs will be allowed, see *ante*, O. lv. The motion on which the application is made should be set down on a day fixed for interlocutory motions (*Grills v. Dillon*, L. R. 2 Ch. D. 325 ; 24 W. R. 431).

Stay of  
proceed-  
ings.

16. An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from, except so far as the Court appealed from, or any judge thereof, or the Court of Appeal, may so order ; and no intermediate act or proceeding shall be invalidated, except so far as the Court appealed from may direct.

Stay.

In one case execution was stayed and the money ordered to be paid into Court and invested in Exchequer Bonds (*The Cybele*, 37 L. T. N. S. 165 ; 3 Mar. L. C. N. S. 478, 481). S. 50 of J. A. 1873, does not apply to a case where a summons has been heard in the first instance by the judge (*The Vivar*, L. R. 2 P. D. 29 ; 35 L. T. N. S. 782). A stay of fourteen days is always granted on application.

Applica-  
tions.

17. Wherever under these rules an application may be made either to the Court below or to the Court of Appeal, or to a judge of the Court below or of the Court of Appeal, it shall be made in the first instance to the Court or judge below.

18. Every application to a judge of the Court of Appeal shall be **Motions** by motion, and the provisions of O. liii. shall apply thereto.

19a. Admiralty appeals from Inferior Courts until further order shall be assigned as heretofore to the present judge of the Admiralty Court. See *ante*, p. 133.

Appeals from the Admiralty Division are sometimes on questions of law, more frequently on questions of fact. When the former come before the Court of Appeal, they are heard and decided as if they were argued for the first time. But, as regards the latter, certain well considered principles have been laid down. When the judge below must necessarily have been influenced in his decision by the demeanour and conduct of the witnesses, the Court of Appeal will rarely disturb his judgment; but, when he has decided on inferences from certain facts, they will not hesitate to overrule his decision (*The Glannibanta*, L. R. 1 P. D. 283; 34 L. T. N. S. 934).

Principles  
by which  
the Court  
of Appeal  
is guided

When the amount of salvage awarded by the Court below is under appeal, it will not be altered unless the difference between the sum allowed and that which in the opinion of the Court of Appeal should have been allotted is very considerable, or, in other words, so exorbitant, so manifestly excessive (or the reverse), that it would be unjust to confirm it. The following circumstances have been considered sufficient grounds for varying the amount,—that the judgment of the judge below has been influenced by something by which it should not have been so influenced,—that he has failed to consider some fact which should have been duly weighed,—or that he has laid undue weight on a fact otherwise worthy of fair consideration (*The Cuba*, Lush. 14; 6 Jur. N. S. 152; *The Amerique*, L. R. 6 P. C. 468; 31 L. T. N. S. 854).

By the Appellate Jurisdiction Act, 1875, a further appeal lies to the House of Lords. When a stay of proceedings is desired pending such an appeal, application should be made to the Court of Appeal. It will usually be given on the

Appeal to  
House of  
Lords.



terms that the petition of appeal be presented within a month, and on the solicitor giving an undertaking as to the costs of the appeal (*The Khedive*, L. R. 5 P. D. 1; 4 Asp. M. C. N. S. 182).

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### ORDER LIX.

#### EFFECT OF NON-COMPLIANCE.

**Non-compliance.** 1. Non-compliance with any of these rules shall not render the proceedings in any action void unless the Court or a judge shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the Court or judge may think fit.

2. The Court or a judge may at any time, and on such terms as to costs or otherwise as to the Court or judge may seem just, amend any defect or error in any proceeding; and all such amendments may be made as may be necessary for the purpose of determining the real question or issue raised by or depending on the proceedings.

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### ORDER LX.

#### OFFICERS.

**Officers** 1. All officers who at the time of the commencement of the said Act shall be attached to the Court of Admiralty shall be attached to the Probate, Divorce, and Admiralty Division of the said High Court.

2. Officers attached to any division shall follow the appeals from the same division.

See J. A. 1875, s. 8.

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### ORDER LXI.

#### SITTINGS AND VACATIONS.

(The same as in the other Division of the High Court).

<b>Sittings.</b>	Michaelmas Sittings	2 Nov.	21 Dec.	
	Hillary	11 Jan.	Wednesday	before
			Easter.	

Easter	Sittings	Tuesday after Easter week.	Friday before Whit Sunday.	
Trinity	„	Tuesday after Whitsun week.	8 Aug.	
Long	Vacation	10 Aug.	24 Oct.	Vacations.
Christmas	„	24 Dec.	6 Jan.	
Easter	„	Good Friday	Easter Tuesday.	
Whitsun	„	Saturday before Whit Sunday.	Whitsun Tuesday.	

3. The days of the commencement and termination of each sitting and vacation shall be included in such sitting and vacation respectively.

4. The several offices of the Supreme Court shall be open on every day of the year, except Sundays, Good Friday, Monday and Tuesday in Easter week, Whit Monday, Christmas Day, and the next following working day, and all days appointed by proclamation to be observed as days of general fast, humiliation, or thanksgiving.

4a. The offices of each district registrar of the High Court of Justice shall be open on every day and hour in the year on which the offices of the registrar of the County Court of the place in which the district registry is situate are required to be kept open.

The hours during which the registry is open are from 10 a.m. to 4 p.m., and the marshal's office from 10 a.m. to 4 p.m., and on Saturdays the hours are 10 a.m. to 2 p.m. By Rule 53, April, 1880, these are the hours of the Supreme Court.

4b. The offices of the Supreme Court (including the judges' chambers) shall close on Saturdays at 2 o'clock.

5. Two of the judges of the High Court shall be selected at the commencement of each Long Vacation for the hearing in London and Middlesex during vacation of all such applications as may require to be immediately or promptly heard. Such two judges shall act as vacation judges for one year from their appointment. In the absence of arrangement between the judges, the two vacation judges shall be the two judges last appointed (whether as judges of the said High Court or of any Court whose jurisdiction is by the said Act transferred to the said High Court) who have not already served as vacation judges of any such Court, and if there shall not be two judges for the time being of the said High Court who shall not have so served, then the two vacation judges shall be the judge (if any) who has not so served and the senior judge or judges who has or have so

Vacation  
business.

served once only, according to seniority of appointment, whether in the said High Court or such other Court as aforesaid. The Lord Chancellor shall not be liable to serve as a vacation judge.

6. The vacation judges may sit either separately or together as a divisional Court as occasion shall require, and may hear and dispose of all actions, matters, and other business, to whichever division the same may be assigned. No order made by a vacation judge shall be reversed or varied except by a divisional Court or the Court of Appeal, or a judge thereof, or the judge who made the order. Any other judge of the High Court may sit in vacation for any vacation judge.

7. The vacation judges of the High Court may dispose of all actions, matters, and other business of an urgent nature during any interval between the sittings of any division of the High Court to which such business may be assigned, although such interval may not be called or known as a vacation.

These last three rules enable Admiralty business of a pressing nature to be heard during the vacations, but the matters must be of a really urgent nature to be heard by a vacation judge; if they are of such a character, it is now the practice to apply to him.

As to non-delivery of pleadings, see O. lvii., r. 4.

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## ORDER LXIII.

### INTERPRETATION OF TERMS.

Interpre-  
tation of  
terms.

The provisions of the 100th section of the Act shall apply to these rules.

In the construction of these rules, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned or referred to shall have or include the meanings following:

“ Person ” shall include a body corporate or politic :

“ Probate actions ” shall include actions and other matters relating to the grant or recall of probate or of letters of administration other than common form business :

“ Proper officer ” shall, unless and until any rule to the contrary is made, mean an officer to be ascertained as follows:—

(a). Where any duty to be discharged under the Act or

these rules is a duty which has heretofore been discharged by any officer, such officer shall continue to be the proper officer to discharge the same :

(b). Where any new duty is under the Act or these rules to be discharged, the proper officer to discharge the same shall be such officer, having previously discharged analogous duties, as may from time to time be directed to discharge the same, in the case of an officer of the Supreme Court, or the High Court of Justice, or the Court of Appeal, not attached to any division, by the Lord Chancellor, and in the case of an officer attached to any division, by the president of the division, and in the case of an officer attached to any judge, by such judge.

“The Act” and “the said Act” shall respectively mean the Supreme Court of Judicature Act, 1873, as amended by this Act.



# APPENDIX I.

## STATUTES.

### PART I.

#### STATUTES RELATING TO PROCEDURE AND JURISDICTION.

#### THE SUPREME COURT OF JUDICATURE ACT, 1873.\*

36 & 37 VICT. CAP. 66.

### PART I.

#### *Constitution and Judges of Supreme Court.*

3. From and after the time appointed for the commencement of **J. A. 1873.** this Act, the several Courts hereinafter mentioned (that is to say), the High Court of Chancery of England, the Court of Queen's Bench, the Court of Common Pleas at Westminster, the Court of Exchequer, the High Court of Admiralty, the Court of Probate, the Court for Divorce and Matrimonial Causes, shall be united and consolidated together, and shall constitute, under and subject to the provisions of this Act, one Supreme Court of Judicature in England. Union of existing Courts into one Supreme Court.

4. The said Supreme Court shall consist of two permanent divisions, one of which, under the name of "Her Majesty's High Court of Justice," shall have and exercise original jurisdiction, with such appellate jurisdiction from inferior Courts as is hereinafter mentioned, and the other of which, under the name of "Her Majesty's Court of Appeal," shall have and exercise appellate jurisdiction, with such original jurisdiction as hereinafter mentioned as may be incident to the determination of any appeal. Division of Supreme Court into a Court of original and a Court of appellate jurisdiction.

5. Her Majesty's High Court of Justice shall be constituted as follows: the Judges thereof shall be (*inter alias*) the Judge of the High Court of Admiralty. Constitution of High Court of Justice.

Every Judge who shall be appointed to fill the place of any other Judge of the said High Court of Justice shall be styled in his appointment "Judge of her Majesty's High Court of Justice," and shall be

\* So much only of this Act is inserted as touches directly the jurisdiction and composition of the Admiralty Division.

**J. A. 1873.** appointed in the same manner in which the Puisne Justices and Junior Barons of the Superior Courts of Common Law have been heretofore appointed.

All the Judges of the said Court shall have in all respects, save as in this Act is otherwise expressly provided, equal power, authority, and jurisdiction; and shall be addressed in the manner which is now customary in addressing the Judges of the Superior Courts of Common Law.

## PART II.

### *Jurisdiction and Law.*

Jurisdiction  
of High  
Court of  
Justice.

**16.** The High Court of Justice shall be a Superior Court of Record, and, subject as in this Act mentioned, there shall be transferred to and vested in the said High Court of Justice the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by (*among others*),

(5.) The High Court of Admiralty.

The jurisdiction by this Act transferred to the High Court of Justice shall include (subject to the exceptions hereinafter contained) the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, all or any one or more of the Judges of the said Courts respectively, sitting in Court or Chambers, or elsewhere, when acting as Judges or Judge, in pursuance of any statute, law, or custom, and all powers given to any such Court, or to any such Judges or Judge, by any statute; and also all ministerial powers, duties, and authorities, incident to any and every part of the jurisdictions so transferred.

Jurisdiction  
transferred  
to Court of  
Appeal.

**18.** The Court of Appeal established by this Act shall be a Superior Court of Record, and there shall be transferred to and vested in such Court all jurisdiction and powers of the Courts following (that is to say): (*inter alia*)—

(5.) All jurisdiction vested in or capable of being exercised by her Majesty in Council, or the Judicial Committee of her Majesty's Privy Council, upon appeal from any judgment or order of the High Court of Admiralty.

Appeals  
from High  
Court.

**19.** The said Court of Appeal shall have jurisdiction and power to hear and determine appeals from any judgment or order, save as hereinafter mentioned, of her Majesty's High Court of Justice, or of any Judges or Judge thereof, subject to the provisions of this Act, and to such rules and orders of Court for regulating the terms and conditions on which such appeals shall be allowed, as may be made pursuant to this Act.

For all the purposes of and incidental to the hearing and determination of any appeal within its jurisdiction, and the amendment, execution, and enforcement of any judgment or order made on any such appeal, and for the purpose of every other authority expressly given to the Court of Appeal by this Act, the said Court of Appeal shall have all the power, authority, and jurisdiction by this Act vested in the High Court of Justice.

Power to  
transfer

**21.** It shall be lawful for her Majesty, if she shall think fit, at any time hereafter by Order in Council to direct that all appeals and

petitions whatsoever to her Majesty in Council, which according to the laws now in force ought to be heard by or before the Judicial Committee of her Majesty's Privy Council, shall, from and after a time to be fixed by such order, be referred for hearing to and be heard by her Majesty's Court of Appeal; and from and after the time fixed by such order, all such appeals and petitions shall be referred for hearing to and be heard by the said Court of Appeal accordingly, and shall not be heard by the said Judicial Committee; and for all the purposes of and incidental to the hearing of such appeals or petitions, and the reports to be made to her Majesty thereon, and all orders thereon to be afterwards made by her Majesty in Council, and also for all purposes of and incidental to the enforcement of any such orders as may be made by the said Court of Appeal or by her Majesty, pursuant to this section (but not for any other purpose), all the power, authority, and jurisdiction now by law vested in the said Judicial Committee shall be transferred to and vested in the said Court of Appeal.

J. A. 1873.

jurisdiction of Judicial Committee by Order in Council.

22. From and after the commencement of this Act the several jurisdictions which by this Act are transferred to and vested in the said High Court of Justice and the said Court of Appeal respectively, shall cease to be exercised, except by the said High Court of Justice and the said Court of Appeal respectively, as provided by this Act; and no further or other appointment of any Judge to any Court whose jurisdiction is so transferred shall be made except as provided by this Act.

Transfer of pending business.

23. The jurisdiction by this Act transferred to the said High Court of Justice and the said Court of Appeal respectively shall be exercised (so far as regards procedure and practice) in the manner provided by this Act, or by such rules and orders of Court as may be made pursuant to this Act: and where no special provision is contained in this Act, or in any such rules or orders of Court with reference thereto, it shall be exercised as nearly as may be in the same manner as the same might have been exercised by the respective Courts from which such jurisdiction shall have been transferred, or by any of such Courts.

Rules as to exercise of jurisdiction.

24. In every civil cause or matter commenced in the High Court of Justice law and equity shall be administered by the High Court of Justice and the Court of Appeal respectively according to the rules following:

Law and equity to be concurrently administered.

- (1.) If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim whatsoever asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right, which heretofore could only have been given by a Court of Equity, the said Courts respectively, and every Judge thereof, shall give to such plaintiff or petitioner such and the same relief as ought to have been given by the Court of Chancery in a suit or proceeding for the same or the like purpose properly instituted before the passing of this Act.
- (2.) If any defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any



J. A. 1873.

deed, instrument, or contract, or against any right, title, or claim asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the said Courts respectively, and every Judge thereof, shall give to every equitable estate, right, or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect, by way of defence against the claim of such plaintiff or petitioner, as the Court of Chancery ought to have given if the same or the like matters had been relied on by way of defence in any suit or proceeding instituted in that Court for the same or the like purpose before the passing of this Act.

- (3.) The said Courts respectively, and every Judge thereof, shall also have power to grant to any defendant in respect of any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by his pleading, and as the said Courts respectively, or any Judge thereof, might have granted in any suit instituted for that purpose by the same defendant against the same plaintiff or petitioner; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of such claim pursuant to any rule of Court or any order of the Court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall thenceforth be deemed a party to such cause or matter, with the same right in respect of his defence against such claim as if he had been duly sued in the ordinary way by such defendant.
- (4.) The said Courts respectively, and every Judge thereof, shall recognise and take notice of all equitable estates, titles, and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the Court of Chancery would have recognised and taken notice of the same in any suit or proceeding duly instituted therein before the passing of this Act.
- (5.) No cause or proceeding at any time pending in the High Court of Justice, or before the Court of Appeal, shall be restrained by prohibition or injunction; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, if this Act had not been passed, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto: Provided always, that nothing in this Act contained shall disable either of the said Courts from directing a stay

of proceedings in any cause or matter pending before it if **J. A. 1873.**  
it shall think fit; and any person, whether a party or not to any such cause or matter, who would have been entitled, if this Act had not passed, to apply to any Court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule, or order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, shall be at liberty to apply to the said Courts respectively, by motion in a summary way, for a stay of proceedings in such cause or matter, either generally, or so far as may be necessary for the purposes of justice; and the Court shall thereupon make such order as shall be just.

(6.) Subject to the aforesaid provisions for giving effect to equitable rights and other matters of equity in manner aforesaid, and to the other express provisions of this Act, the said Courts respectively, and every Judge thereof, shall recognise and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations, and liabilities, existing by the common law or by any custom, or created by any statute, in the same manner as the same would have been recognised and given effect to if this Act had not passed by any of the Courts whose jurisdiction is hereby transferred to the said High Court of Justice.

(7.) The High Court of Justice and the Court of Appeal respectively, in the exercise of the jurisdiction vested in them by this Act, in every cause or matter pending before them respectively, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as to them shall seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter; so that, as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

**25.** And whereas it is expedient to take occasion of the union of the several Courts whose jurisdiction is hereby transferred to the said High Court of Justice to amend and declare the law to be hereafter administered in England as to the matters next hereinafter mentioned: Be it enacted as follows:

Rules of law upon certain points

(6.) Any absolute assignment, by writing under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be, and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed), to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other

Assignment of debts and choses in action.

J. A. 1873.

Stipulations  
not of the  
essence of  
contracts.

Injunction  
and re-  
ceivers.

Damages by  
collisions at  
sea.

Cases of  
conflict not  
enume-  
rated.

remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor: Provided always, that if the debtor, trustee, or other person liable in respect of such debt or chose in action shall have had notice that such assignment is disputed by the assignor, or anyone claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may, if he think fit, pay the same into the High Court of Justice under and in conformity with the provisions of the Acts for the relief of trustees.

- (7.) Stipulations in contracts, as to time or otherwise, which would not before the passing of this Act have been deemed to be or to have become of the essence of such contracts in a Court of Equity, shall receive in all Courts the same construction and effect as they would have heretofore received in equity.
- (8.) A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it shall appear to the Court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the Court shall think just; and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the Court shall think fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable.
- (9.) In any cause or proceeding for damages arising out of a collision between two ships, if both ships shall be found to have been in fault, the rules hitherto in force in the Court of Admiralty, so far as they have been at variance with the rules in force in the Courts of Common Law, shall prevail.
- (11.) Generally in all matters not hereinbefore particularly mentioned, in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail.

## PART III.

*Sittings and Distribution of Business.*

Abolition of  
terms.

26. The division of the legal year into terms shall be abolished so far as relates to the administration of justice; and there shall no longer be terms applicable to any sitting or business of the High Court of Justice, or of the Court of Appeal, or of any commissioners to whom any jurisdiction may be assigned under this Act; but in all

other cases in which, under the law now existing, the terms into which the legal year is divided are used as a measure for determining the time at or within which any act is required to be done, the same may continue to be referred to for the same or the like purpose, unless and until provision is otherwise made by any lawful authority. Subject to rules of Court, the High Court of Justice and the Court of Appeal, and the Judges thereof respectively, shall have power to sit and act, at any time, and at any place, for the transaction of any part of the business of such Courts respectively, or of such Judges or Commissioners, or for the discharge of any duty which by any Act of Parliament, or otherwise, is required to be discharged during or after term.

J. A. 1873.

28. Provision shall be made by rules of Court for the hearing, in London or Middlesex, during vacation, by Judges of the High Court of Justice and the Court of Appeal respectively, of all such applications as may require to be immediately or promptly heard.

Sittings in vacation.

31. For the more convenient despatch of business in the said High Court of Justice (but not so as to prevent any Judge from sitting whenever required in any Divisional Court, or for any Judge of a different division from his own), there shall be in the said High Court five divisions, consisting of such number of Judges respectively as hereinafter mentioned. Such five divisions shall respectively include, immediately on the commencement of this Act, the several Judges following ; (that is to say,)

Divisions of the High Court of Justice.

(5.) One other division shall consist of two Judges who, immediately on the commencement of this Act, shall be the existing Judge of the Court of Probate and of the Court for Divorce and Matrimonial Causes, and the existing Judge of the High Court of Admiralty, unless either of them is appointed an ordinary Judge to the Court of Appeal. The existing Judge of the Court of Probate shall (unless so appointed) be the president of the said division, and subject thereto the senior Judge of the said division, according to the order of precedence under this Act, shall be president.

The said five divisions shall be called respectively the Chancery Division, the Queen's Bench Division, the Common Pleas Division, the Exchequer Division, and the Probate, Divorce, and Admiralty Division.

Any Judge of any of the said divisions may be transferred by her Majesty, under her royal sign manual, from one to another of the said divisions.

Upon any vacancy happening among the Judges of the said High Court, the Judge appointed to fill such vacancy shall, subject to the provisions of this Act, and to any rules of Court which may be made pursuant thereto, become a member of the same division to which the Judge whose place has become vacant belonged.

33. All causes and matters which may be commenced in, or which shall be transferred by this Act to, the High Court of Justice, shall be distributed among the several divisions and Judges of the said High Court, in such manner as may from time to time be determined by any rules of Court, or orders of transfer, to be made under the authority of this Act ; and in the meantime, and subject thereto, all such causes and matters shall be assigned to the said divisions respectively, in the manner hereinafter provided. Every document

Rules of Court to provide for distribution of business.

**J. A. 1878.** by which any cause or matter may be commenced in the said High Court shall be marked with the name of the division, or with the name of the Judge, to which or to whom the same is assigned.

There shall be assigned (subject as aforesaid) to the Probate, Divorce, and Admiralty Division of the said High Court:

(1.) All causes and matters pending in the Court of Probate, or in the Court for Divorce and Matrimonial Causes, or in the High Court of Admiralty, at the commencement of this Act:

(2.) All causes and matters which would have been within the exclusive cognizance of the Court of Probate, or the Court for Divorce and Matrimonial Causes, or of the High Court of Admiralty, if this Act had not passed.

Power of transfer.

**36.** Any cause or matter may at any time, and at any stage thereof, and either with or without application from any of the parties thereto, be transferred by such authority and in such manner as rules of Court may direct from one division or Judge of the High Court of Justice to any other division or Judge thereof, or may by the like authority be retained in the division in which the same was commenced, although such may not be the proper division to which the same cause or matter ought, in the first instance, to have been assigned.

Powers of one or more Judges not constituting Court.

**39.** Any Judge of the said High Court of Justice may, subject to any rules of Court, exercise in Court or in Chambers all or any part of the jurisdiction by this Act vested in the said High Court, in all such causes and matters, and in all such proceedings in any causes or matters, as before the passing of this Act might have been heard in Court or in Chambers respectively by a single Judge of any of the Courts whose jurisdiction is hereby transferred to the said High Court, or as may be directed or authorised to be so heard by any rules of Court to be hereafter made. In all such cases, any Judge sitting in Court shall be deemed to constitute a Court.

Distribution of business among the Judges of Probate, Divorce, and Admiralty Divisions of the High Court.

**42.** Subject to any rules of Court, and in the meantime until such rules shall be made, all business arising out of any cause or matter assigned to the Chancery or Probate, Divorce, and Admiralty Division of the said High Court shall be transacted and disposed of in the first instance by one Judge only, as has been heretofore accustomed in the Court of Chancery, the Court of Probate and for Divorce and Matrimonial Causes, and the High Court of Admiralty respectively; and every cause or matter which, at the commencement of this Act, may be depending in the Court of Chancery, the Court of Probate and for Divorce and Matrimonial Causes, and the High Court of Admiralty respectively, shall (subject to the power of transfer) be assigned to the same Judge in or to whose Court the same may have been depending or attached at the commencement of this Act; and every cause or matter which after the commencement of this Act may be commenced in the Chancery Division of the said High Court shall be assigned to one of the Judges thereof, by marking the same with the name of such of the said Judges as the plaintiff or petitioner (subject to the power of transfer) may in his option think fit: Provided that (subject to any rules of Court, and to the power of transfer, and to the provisions of this Act as to trial of questions or issues by commissioners, or in Middlesex or London) all causes and matters which,

if this Act had not passed, would have been within the exclusive cognizance of the High Court of Admiralty, shall be assigned to the present Judge of the said Admiralty Court during his continuance in office as a Judge of the High Court. J. A. 1873.

44. Divisional Courts may be held for the transaction of any part of the business assigned to the Probate, Divorce, and Admiralty Division of the said High Court, which the Judges of such division, with the concurrence of the President of the said High Court, deem proper to be heard by a Divisional Court. Any cause or matter assigned to the said Probate, Divorce, and Admiralty Division may be heard at the request of the President of such division, with the concurrence of the President of the said High Court, by any other Judge of the said High Court. Divisional Courts for business belonging to the division.

46. Subject to any rules of Court, any Judge of the said High Court, sitting in the exercise of its jurisdiction elsewhere than in a Divisional Court, may reserve any case, or any point in a case, for the consideration of a Divisional Court, or may direct any case, or point in a case, to be argued before a Divisional Court; and any Divisional Court of the said High Court shall have power to hear and determine any such case or point so reserved or so directed to be argued. Cases and points may be reserved for or directed to be argued before Divisional Courts.

49. No order made by the High Court of Justice or any Judge thereof, by the consent of parties, or as to costs only, which by law are left to the discretion of the Court, shall be subject to any appeal, except by leave of the Court or Judge making such order. What orders shall not be subject to appeal.

50. Every order made by a Judge of the said High Court in Chambers, except orders made in the exercise of such discretion as aforesaid, may be set aside or discharged upon notice by any Divisional Court, or by the Judge sitting in Court, according to the course and practice of the division of the High Court to which the particular cause or matter in which such order is made may be assigned; and no appeal shall lie from any such order, to set aside or discharge which no such motion has been made, unless by special leave of the Judge by whom such order was made, or of the Court of Appeal. As to discharging orders made in Chambers.

52. In any cause or matter pending before the Court of Appeal, any direction incidental thereto, not involving the decision of the appeal, may be given by a single Judge of the Court of Appeal; and a single Judge of the Court of Appeal may at any time during vacation make any interim order to prevent prejudice to the claims of any parties pending an appeal as he may think fit; but every such order made by a single Judge may be discharged or varied by the Court of Appeal or a Divisional Court thereof. Power of a single Judge in Court of Appeal.

60. And whereas it is expedient to facilitate the prosecution in country districts of such proceedings as may be more speedily, cheaply, and conveniently carried on therein, it shall be lawful for her Majesty, by Order in Council, from time to time to direct that there shall be district registrars in such places as shall be in such order mentioned for districts to be thereby defined, from which writs of summons for the commencement of actions in the High Court of Justice may be issued, and in which such proceedings may be taken and recorded as are hereinafter mentioned; and her Majesty may thereby appoint that any registrar of any County Court, or any registrar or prothonotary or district prothonotary of any local Court whose jurisdiction is hereby transferred to the said High Court of Her Majesty may establish district registries in the country for the Supreme Court.

**J. A. 1873.** Justice, or from which an appeal is hereby given to the said Court of Appeal, or any person who having been a district registrar of the Court of Probate, or of the Admiralty Court, shall under this Act become and be a district registrar of the said High Court of Justice, or who shall hereafter be appointed such district registrar, shall and may be a district registrar of the said High Court for the purpose of issuing such writs as aforesaid, and having such proceedings taken before him as are hereinafter mentioned. This section shall come into operation immediately upon the passing of this Act.

Seals of district registries.

**61.** In every such district registry such seal shall be used as the Lord Chancellor shall from time to time, either before or after the time fixed for the commencement of this Act, direct, which seal shall be impressed on every writ and other document issued out of or filed in such district registry; and all such writs and documents, and all exemplifications and copies thereof, purporting to be sealed with the seal of any such district registry, shall in all parts of the United Kingdom be received in evidence without further proof thereof.

Power of district registrars.

**62.** All such district registrars shall have power to administer oaths and perform such other duties in respect of any proceedings pending in the said High Court of Justice or in the said Court of Appeal as may be assigned to them from time to time by rules of Court, or by any special order of the Court.

Proceedings to be taken in district registries.

**64.** Subject to the rules of Court in force for the time being, writs of summons for the commencement of actions in the High Court of Justice shall be issued by the district registrars when thereunto required; and unless any order to the contrary shall be made by the High Court of Justice or by any Judge thereof, all such further proceedings, including proceedings for the arrest or detention of a ship, her tackle, apparel, furniture, cargo, or freight, as may and ought to be taken by the respective parties to such action in the said High Court, down to and including entry for trial, or (if the plaintiff is entitled to sign final judgment or to obtain an order for an account by reason of the non-appearance of the defendant) down to and including final judgment, or an order for an account, may be taken before the district registrar, and recorded in the district registry, in such manner as may be prescribed by rules of Court; and all such other proceedings in any such action as may be prescribed by rules of Court shall be taken, and if necessary may be recorded in the same district registry.

Including arrest of ship, &c.

Power for Court to remove proceedings from district registries.

**65.** Any party to an action in which a writ of summons shall have been issued from any such district registry shall be at liberty at any time to apply, in such manner as shall be prescribed by rules of Court, to the said High Court, or to a Judge at Chambers of the division of the said High Court to which the action may be assigned, to remove the proceedings from such district registry into the proper office of the said High Court; and the Court or Judge may, if it be thought fit, grant such application, and in such case the proceedings and such original documents, if any, as may be filed therein shall upon receipt of such order be transmitted by the district registrar to the proper office of the said High Court, and the said action shall thenceforth proceed in the said High Court in the same manner as if it had been originally commenced by a writ of summons issued out of the proper office in London; or the Court or Judge, if it be

thought right, may thereupon direct that the proceedings may continue to be taken in such district registry.

J. A. 1873.

66. It shall be lawful for the Court, or any Judge of the division to which any cause or matter pending in the said High Court is assigned, if it shall be thought fit, to order that any books or documents may be produced, or any accounts taken or inquiries made, in the office of or by any such district registrar as aforesaid; and in any such case the district registrar shall proceed to carry all such directions into effect in the manner prescribed; and in any case in which any such accounts or inquiries shall have been directed to be taken or made by any district registrar, the report in writing of such district registrar as to the result of such accounts or inquiries may be acted upon by the Court, as to the Court shall seem fit.

Accounts and inquiries may be referred to district registrars.

76. All Acts of Parliament relating to the several Courts and Judges whose jurisdiction is hereby transferred to the said High Court of Justice and the said Court of Appeal respectively, or wherein any of such Courts or Judges are mentioned or referred to, shall be construed and take effect, so far as relates to anything done or to be done after the commencement of this Act, as if the said High Court of Justice or the said Court of Appeal, and the Judges thereof, respectively, as the case may be, had been named therein instead of such Courts or Judges whose jurisdiction is so transferred respectively.

Acts of Parliament relating to former Courts to be read as applying to Courts under this Act.

## PART VI.

### *Jurisdiction of Inferior Courts.*

88. It shall be lawful for her Majesty from time to time by Order in Council to confer on any inferior Court of civil jurisdiction the same jurisdiction in Admiralty as any County Court now has, or may hereafter have, and such jurisdiction, if and when conferred, shall be exercised in the manner by this Act directed.

Power by Order in Council to confer jurisdiction on inferior Courts.

89. Every inferior Court which now has or which may after the passing of this Act have jurisdiction in equity, or at law and in equity, and in Admiralty respectively, shall, as regards all causes of action within its jurisdiction for the time being, have power to grant, and shall grant in any proceeding before such Court, such relief, redress, or remedy, or combination of remedies, either absolute or conditional, and shall in every such proceeding give such and the like effect to every ground of defence or counter-claim, equitable or legal (subject to the provision next hereinafter contained), in as full and ample a manner as might and ought to be done in the like case by the High Court of Justice.

Powers of inferior Courts having Equity and Admiralty jurisdiction.

90. Where in any proceeding before any such inferior Court any defence or counter-claim of the defendant involves matter beyond the jurisdiction of the Court, such defence or counter-claim shall not affect the competence or the duty of the Court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the Court has jurisdiction to administer shall be given to the defendant upon any such counter-claim: Provided always, that in such case it shall be lawful for the High Court, or any division or Judge thereof, if it

Counter-claims in inferior Courts, and transfers therefrom.



**J. A. 1873.** shall be thought fit, on the application of any party to the proceeding, to order that the whole proceeding be transferred from such inferior Court to the High Court, or to any division thereof; and in such case the record in such proceeding shall be transmitted by the registrar, or other proper officer of the inferior Court, to the said High Court; and the same shall thenceforth be continued and prosecuted in the said High Court as if it had been originally commenced therein.

Rules of law to apply to inferior Courts.

**91.** The several rules of law enacted and declared by this Act shall be in force and receive effect in all Courts whatsoever in England, so far as the matters to which such rules relate shall be respectively cognizable by such Courts.

## PART VII.

### *Miscellaneous Provisions.*

Transfer of books and papers to Supreme Court.

**92.** All books, documents, papers, and chattels in the possession of any Court, the jurisdiction of which is hereby transferred to the High Court of Justice or to the Court of Appeal, or of any officer or person attached to any such Court, as such officer, or by reason of his being so attached, shall be transferred to the Supreme Court, and shall be dealt with by such officer or person in such manner as the High Court of Justice or the Court of Appeal may by order direct; and any person failing to comply with any order made for the purpose of giving effect to this section shall be guilty of a contempt of the Supreme Court.

Interpretation of terms.

**100.** In the construction of this Act, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned shall have, or include, the meanings following; (that is to say,)

“Rules of Court” shall include forms.

“Cause” shall include any action, suit, or other original proceeding between a plaintiff and a defendant, and any criminal proceeding by the Crown.

“Suit” shall include action.

“Action” shall mean a civil proceeding commenced by writ, or in such other manner as may be prescribed by rules of Court: and shall not include a criminal proceeding by the Crown.

“Plaintiff” shall include every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, suit, petition, motion, summons, or otherwise.

“Petitioner” shall include every person making any application to the Court, either by petition, motion, or summons, otherwise than as against any defendant.

“Defendant” shall include every person served with any writ of summons or process, or served with notice of, or entitled to attend any proceedings.

“Party” shall include every person served with notice of, or attending any proceeding, although not named on the record.

- “**Matter**” shall include every proceeding in the Court not in a J. A. 1875.  
cause.
- “**Pleading**” shall include any petition or summons, and also shall include the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant.
- “**Judgment**” shall include decree.
- “**Order**” shall include rule.
- “**Oath**” shall include solemn affirmation and statutory declaration.
- “**Pension**” shall include retirement and superannuation allowance.
- “**Existing**” shall mean existing at the time appointed for the commencement of this Act.

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THE SUPREME COURT OF JUDICATURE ACT, 1875.

38 & 39 VICT. CAP. 77.

8. Whereas by section eleven of the principal Act it is provided as J. A. 1875.  
follows : “ Every existing Judge who is by this Act made a Judge of the High Court of Justice or an ordinary Judge of the Court of Appeal shall, as to tenure of office, rank, title, salary, pension, patronage, and powers of appointment or dismissal, and all other privileges and disqualifications, remain in the same condition as if this Act had not passed ; and, subject to the change effected in their jurisdiction and duties by or in pursuance of the provisions of this Act, each of the said existing Judges shall be capable of performing and liable to perform all duties which he would have been capable of performing or liable to perform in pursuance of any Act of Parliament, law, or custom if this Act had not passed. No Judge appointed before the passing of this Act shall be required to act under any commission of assize, nisi prius, oyer and terminer, or gaol delivery, unless he was so liable by usage or custom at the commencement of this Act : ”

And whereas the Judge of the High Court of Admiralty is by the principal Act appointed a Judge of the High Court of Justice :

And whereas such Judge is, as to salary and pension, inferior in position to the other Puisne Judges of the Superior Courts of Common Law, but holds certain ecclesiastical and other offices in addition to the office of Judge of the High Court of Admiralty :

And whereas it is expedient that such Judge, if he be willing to relinquish such other offices, should be placed in the same position as to rank, salary, and pension as the other Puisne Judges of the Superior Courts of Common Law :

Be it enacted that—

If the existing Judge of the High Court of Admiralty under his hand signifies to the Lord Chancellor in writing, before the commencement of the principal Act, that he is willing to relinquish such

J. A. 1875 other offices as aforesaid, and does before the commencement of the principal Act resign all other offices of emolument held by him except the office of Judge of the High Court of Admiralty, he shall, from and after the commencement of the principal Act, be entitled to the same rank, salary, and pension as if he had been appointed a Judge of the High Court of Justice immediately on the commencement of the principal Act, with this addition, that, in reckoning service for the purposes of his pension, his service as a Judge of the High Court of Admiralty shall be reckoned in the same manner as if the High Court of Justice had been established at the time of his accepting the office of Judge of the High Court of Admiralty, and he had continued from such time to be a Judge of the said High Court of Justice.

The present holder of the office of registrar of her Majesty in Ecclesiastical and Admiralty causes shall, as respects any appeals in which he would otherwise be concerned coming within the cognizance of the Court of Appeal, be deemed to be an officer attached to the Supreme Court; and the office, so far as respects the duties in relation to such appeals as aforesaid, shall be deemed to be a separate office within the meaning of section seventy-seven of the principal Act, and may be dealt with accordingly. He shall be entitled, in so far as he sustains any loss of emoluments by or in consequence of the principal Act or this Act, to prefer a claim to the Treasury in the same manner as an officer paid out of fees whose emoluments are affected by the passing of the principal Act is entitled to do under section eighty of the principal Act.

Subject as aforesaid, the person who is at the time of the passing of this Act registrar of her Majesty in Ecclesiastical and Admiralty causes shall, notwithstanding anything in the principal Act or this Act, have the same rank and hold his office upon the same tenure and upon the same terms and conditions as heretofore; but it shall be lawful for her Majesty by Order in Council made upon the recommendation of the Lord Chancellor, with the concurrence of the Treasury, to make, notwithstanding anything contained in any Act of Parliament, such arrangements with respect to the duties of the said last-mentioned office, either by abolition thereof or otherwise, as to her Majesty may seem expedient: Provided that such order shall not take effect during the continuance in such office of the said person so being registrar at the time of the passing of this Act, without his assent.

Every Judge of the Probate, Divorce, and Admiralty Division of the said High Court of Justice appointed after the passing of this Act shall, so far as the state of business in the said division will admit, share with the Judges mentioned in section thirty-seven of the principal Act the duty of holding sittings for trials by jury in London and Middlesex, and sittings under commissions of assize, oyer and terminer, and gaol delivery.

Provision as to option for any plaintiff (subject to rules) to choose in what division he will

11. Subject to any rules of Court, and to the provisions of the principal Act and this Act, and to the power of transfer, every person by whom any cause or matter may be commenced in the said High Court of Justice shall assign such cause or matter to one of the divisions of the said High Court as he may think fit, by marking the document by which the same is commenced with the name of such

division, and giving notice thereof to the proper officer of the Court : **J. A. 1875.**  
 Provided that—

- (1.) All interlocutory and other steps and proceedings in or before the said High Court in any cause or matter subsequent to the commencement thereof, shall be taken (subject to any rules of Court and to the power of transfer) in the division of the said High Court to which such cause or matter is for the time being attached ; and,
- (2.) If any plaintiff or petitioner shall at any time assign his cause or matter to any division of the said High Court to which, according to the rules of Court or the provisions of the principal Act or this Act, the same ought not to be assigned, the Court, or any Judge of such division, upon being informed thereof, may, on a summary application at any stage of the cause or matter, direct the same to be transferred to the division of the said Court to which, according to such rules or provisions, the same ought to have been assigned, or he may, if he think it expedient so to do, retain the same in the division in which the same was commenced ; and all steps and proceedings whatsoever taken by the plaintiff or petitioner or by any other party in any such cause or matter, and all orders made therein by the Court or any Judge thereof before any such transfer, shall be valid and effectual to all intents and purposes in the same manner as if the same respectively had been taken and made in the proper division of the said Court to which such cause or matter ought to have been assigned ; and,
- (3.) Subject to rules of Court, a person commencing any cause or matter shall not assign the same to the Probate, Divorce, and Admiralty Division unless he would have been entitled to commence the same in the Court of Probate, or in the Court for Divorce and Matrimonial Causes, or in the High Court of Admiralty, if this Act had not passed.

sub.,—in substitution for 36 & 37 Vict. c. 66, s. 35.

13. Whereas by section sixty of the principal Act it is provided that for the purpose of facilitating the prosecution in country districts of legal proceedings, it shall be lawful for her Majesty by Order in Council from time to time to direct that there shall be district registrars in such places as shall be in such order mentioned for districts to be thereby defined ; and whereas it is expedient to amend the said section ; be it therefore enacted that—

Amendment of s. 60 of 36 & 37 Vict. c. 66, as to district registrars.

Where any such order has been made, two persons may, if required, be appointed to perform the duties of district registrar in any district named in the order, and such persons shall be deemed to be joint district registrars, and shall perform the said duties in such manner as may from time to time be directed by the said order, or any Order in Council amending the same.

Moreover, the registrar of any inferior Court of Record having jurisdiction in any part of any district defined by such order (other than a County Court) shall, if appointed by her Majesty, be qualified to be a district registrar for the said district, or for any and such part thereof as may be directed by such order or any order amending the same.

Every district registrar shall be deemed to be an officer of the

**J. A. 1875.** Supreme Court, and be subject accordingly to the jurisdiction of such Court, and of the divisions thereof.

Provision as to rules of Probate, Divorce, and Admiralty Courts, being rules of the High Court,—in substitution for 36 & 37 Vict. c. 66, s. 70.

Provision for saving of existing procedure of Courts when not inconsistent with this Act, or rules of Court,—in substitution for 36 & 37 Vict. c. 66, s. 73.

Additional power as to regulation of practice and procedure by rules of Court.

Fixing and collection of fees in High Court and Court of Appeal

**18.** All rules and orders of Court in force at the time of the commencement of this Act in the Admiralty Court, except so far as they are expressly varied by the first schedule hereto, or by rules of Court made by Order in Council before the commencement of this Act, shall remain and be in force in the High Court of Justice and in the Court of Appeal respectively until they shall respectively be altered or annulled by any rules of Court made after the commencement of this Act.

**21.** Save as by the principal Act or this Act, or by any rules of Court, may be otherwise provided, all forms and methods of procedure which at the commencement of this Act were in force in any of the Courts whose jurisdiction is by the principal Act or this Act transferred to the said High Court and to the said Court of Appeal respectively, under or by virtue of any law, custom, general order, or rules whatsoever, and which are not inconsistent with the principal Act or this Act or with any rules of Court, may continue to be used and practised, in the said High Court of Justice and the said Court of Appeal respectively, in such and the like cases, and for such and the like purposes, as those to which they would have been applicable in the respective Courts of which the jurisdiction is so transferred, if the principal Act and this Act had not passed.

**24.** Where any provisions in respect of the practice or procedure of any Courts the jurisdiction of which is transferred by the principal Act or this Act to the High Court of Justice or the Court of Appeal, are contained in any Act of Parliament, rules of Court may be made for modifying such provisions to any extent that may be deemed necessary for adapting the same to the High Court of Justice and the Court of Appeal, without prejudice nevertheless to any power of the Lord Chancellor, with the concurrence of the Treasury, to make any rules with respect to the Paymaster-General, or otherwise.

Any provisions relating to the payment, transfer, or deposit into, or in, or out of any Court of any money or property, or to the dealing therewith, shall, for the purposes of this section, be deemed to be provisions relating to practice and procedure.

The Lord Chancellor, with the concurrence of the Treasury, may from time to time, by order, determine to what accounts and how intitled any such money or property as last aforesaid, whether paid, transferred, or deposited before or after the commencement of this Act, is to be carried, and modify all or any forms relating to such accounts; and the Governor and Company of the Bank of England, and all other companies, bodies corporate, and persons, shall make such entries and alterations in their books as may be directed by the Lord Chancellor, with the concurrence of the Treasury, for the purpose of carrying into effect any such order.

**26.** The Lord Chancellor, with the advice and consent of the Judges of the Supreme Court or any three of them, and with the concurrence of the Treasury, may, either before or after the commencement of this Act, by order, fix the fees and percentages (including the percentage on estates of lunatics) to be taken in the High Court of Justice or in the Court of Appeal, or in any Court created by any commission or in any office which is connected with

any of those Courts, or in which any business connected with any of those Courts is conducted, or by any officer paid wholly or partly out of public moneys who is attached to any of those Courts or the Supreme Court, or any Judge of those Courts, including the masters and other officers in lunacy, and may from time to time by order increase, reduce, or abolish all or any of such fees and percentages, and appoint new fees and percentages to be taken in the said Courts or offices or any of them, or by any such officer as aforesaid. J. A. 1875.

Any order made in pursuance of this section shall be binding on all the Courts, offices, and officers to which it refers, in the same manner as if it had been enacted by Parliament.

All such fees and percentages shall (save as otherwise directed by the order) be paid into the receipt of her Majesty's Exchequer and be carried to the Consolidated Fund, and with respect thereto the following rules shall be observed :

- (1.) The fees and percentages shall, except so far as the order may otherwise direct, be taken by stamps, and if not taken by stamps shall be taken, applied, accounted for, and paid over in such manner as may be directed by the order.
- (2.) Such stamps shall be impressed or adhesive, as the Treasury from time to time direct.
- (3.) The Treasury, with the concurrence of the Lord Chancellor, may from time to time make such rules as may seem fit for publishing the amount of the fees and regulating the use of such stamps, and particularly for prescribing the application thereof to documents from time to time in use or required to be used for the purposes of such stamps, and for insuring the proper cancellation of stamps and for keeping accounts of such stamps.
- 4.) Any document which ought to bear a stamp in pursuance of this Act, or any rule or order made thereunder, shall not be received, filed, used, or admitted in evidence unless and until it is properly stamped, within the time prescribed by the rules under this section regulating the use of stamps, but if any such document is through mistake or inadvertence received, filed, or used without being properly stamped, the Lord Chancellor or the Court may, if he or it shall think fit, order that the same be stamped as in such order may be directed.

An order under this section may abolish any existing fees and percentages which may be taken in the said Courts or offices, or any of them, or by the said officers or any of them, but, subject to the provisions of any order made in pursuance of this section, the existing fees and percentages shall continue to be taken, applied, and accounted for in the existing manner.

**33.** From and after the commencement of this Act there shall be **Repeal.**  
repealed—

- (1.) The Acts specified in the second schedule to this Act, to the extent in the the third column in that schedule mentioned, without prejudice to anything done or suffered before the said commencement under the enactments hereby repealed ; also,
- (2.) Any other enactment inconsistent with this Act or the principal Act.

## THE APPELLATE JURISDICTION ACT, 1876.

39 &amp; 40 VICT. CAP. 59.

A. J. Act,  
1876.Appoint-  
ment of  
vice-admi-  
ral, judge,  
and officers  
of Vice-  
Admiralty  
Court.

23. Whereas by "The Vice-Admiralty Courts Act, 1863," it is enacted that "nothing in this Act contained shall be taken to affect the power of the Admiralty to appoint any vice-admiral, or any Judge, registrar, marshal, or other officer of any Vice-Admiralty Court, as heretofore, by warrant from the Admiralty, and by letters patent issued under the seal of the High Court of Admiralty of England :"

And whereas since the commencement of the Supreme Court or Judicature Acts, 1873 and 1875, doubts have arisen with respect to the exercise of the said power of the Admiralty, it is expedient to remove such doubts : be it therefore enacted as follows :—

Any power of the Admiralty to appoint or cancel the appointment of a vice-admiral, or a Judge, registrar, marshal, or other officer of a Vice-Admiralty Court, may, after the passing of this Act, be exercised by some writing under the hands of the Admiralty, and the seal of the office of Admiralty, and in such form as the Admiralty from time to time direct.

Every appointment so made shall have the same effect, and every vice-admiral, Judge, registrar, marshal, and other officer so appointed shall have the same jurisdiction, power, and authority, and be subject to the same obligation, as if he had been appointed before the commencement of the Supreme Court of Judicature Acts, 1873 and 1875, under the seal of the High Court of Admiralty of England. "Admiralty" in this section means the Lord High Admiral, or the Commissioners for executing his office, or any two of such Commissioners.

## THE ADMIRALTY COURT ACT, 1840.

3 &amp; 4 VICT. CAP. 65.

A. C. Act,  
1840.

*An Act to improve the Practice and extend the Jurisdiction of the High Court of Admiralty of England.* [7th August, 1840.]

Dean of  
Arches to  
sit for Judge  
of Court of  
Admiralty  
in certain  
cases.

WHEREAS the jurisdiction of the High Court of Admiralty of England may be in certain respects advantageously extended, and the practice thereof improved : be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, that it shall be lawful for the dean of the Arches for the time being to be assistant to and to exercise all the power, authority and jurisdiction, and to have all the privileges and protections of the Judge of the said High Court of Admiralty, with respect to all suits and proceedings in the said Court, and that all such suits and proceedings, and all things relating thereto, brought or taking place before the dean of the Arches, whether the Judge of the said High Court of Admiralty be or be not at the same time sitting or transacting the business of the

same Court, and also during any vacancy of the office of Judge of the said Court, shall be of the same force and effect in all respects as if the same had been brought or had taken place before the Judge himself, and all such suits and proceedings shall be entered and registered as having been brought and as having taken place before the dean of the Arches sitting for the Judge of the High Court of Admiralty.

A. C. Act,  
1840.

2. And be it declared and enacted, that all persons who now are or at any time hereafter may be entitled to practise as advocates in the Court of Arches are and shall be entitled to practise as advocates in the said High Court of Admiralty; and that all persons who now are or hereafter may be entitled to act as surrogates or proctors in the Court of Arches shall be entitled respectively to practise and act, or to be admitted to practise and act, as the case may be, as surrogates and proctors in the said High Court of Admiralty, according to the rules and practice now prevailing and observed or hereafter to be made in and by the said High Court of Admiralty touching the admission and practising of advocates, surrogates and proctors in the said Court respectively.

Advocates,  
surrogates,  
and proctors  
of Court of  
Arches to be  
admitted in  
Court of  
Admiralty.

3. And be it enacted, that after the passing of this Act, whenever any ship or vessel shall be under arrest by process issuing from the said High Court of Admiralty, or the proceeds of any ship or vessel having been so arrested shall have been brought into and be in the registry of the said Court, in either such case the said Court shall have full jurisdiction to take cognizance of all claims and causes of action of any person in respect of any mortgage of such ship or vessel, and to decide any suit instituted by any such person in respect of any such claims or cause of action respectively.

Whenever a  
vessel shall  
be arrested  
or proceeds  
brought into  
registry, the  
Court to  
have juris-  
diction over  
claims of  
mortgagees.

4. And be it enacted, that the said Court of Admiralty shall have jurisdiction to decide all questions as to the title to or ownership of any ship or vessel, or the proceeds thereof remaining in the registry, arising in any cause of possession, salvage, damage, wages or bottomry, which shall be instituted in the said Court after the passing of this Act.

Court to  
decide ques-  
tions of title  
in all causes  
of posses-  
sion, sal-  
vage, &c.

5. And be it enacted, that whenever any award shall have been made by any justices of the peace or by any person nominated by them, or within the jurisdiction of the cinque ports by any commissioners, respecting the amount of salvage to be paid, or respecting any claims and demands for services or compensation, which such justices and commissioners within their several jurisdictions are empowered to decide under the provisions of two Acts passed in the second year of the reign of King George the Fourth, for remedying certain defects relative to the adjustment of salvage, or whenever any sum shall have been voluntarily paid on any such account of salvage, services or compensation, it shall be lawful for any person interested in the distribution of the amount awarded or paid to require distribution to be forthwith made thereof, and the person or persons by whom such amount shall be awarded, or in the case of voluntary payment the person by whom the same shall have been received, shall forthwith proceed to the distribution thereof among the several persons entitled thereunto, to be certified in the case of an award under the hand of the person or persons by whom such amount shall be awarded, and an account of every such distribution shall be annexed to the award; and if any person interested in the distribution shall

Appeals  
may be made  
to the Court  
of Admi-  
rality on dis-  
tribution.



**A. C. Act,  
1840.**

think himself aggrieved on account of its not being made according to the award, or otherwise, it shall be lawful for him, within fourteen days after the making of the award, or payment of the money, but not afterwards, to take out a monition from the said High Court of Admiralty, requiring any person being in possession of any part of the amount awarded or voluntarily paid to bring in the same, to abide the judgment of the Court concerning the distribution thereof; and in the case of an award the person or persons by whom the award shall have been made shall, upon monition, send without delay to the said High Court of Admiralty a copy of the proceedings before him and them, and of the award, on unstamped paper, certified under his or their hand; and the same shall be admitted by the Court as evidence, and the amount awarded or voluntarily paid shall be distributed according to the judgment of the Court.

The Court, in certain cases, may adjudicate on claims for services and necessaries, although not on the high seas.

6. And be it enacted, that the High Court of Admiralty shall have jurisdiction to decide all claims and demands whatsoever in the nature of salvage for services rendered to or damage received by any ship or sea-going vessel, or in the nature of towage, or for necessaries supplied to any foreign ship or sea-going vessel, and to enforce the payment thereof, whether such ship or vessel may have been within the body of a county, or upon the high seas, at the time when the services were rendered or damage received, or necessaries furnished, in respect of which such claim is made.

Evidence may be taken *in* *roce* in open Court.

7. And be it enacted, that in any suit depending in the said High Court of Admiralty, the Court (if it shall think fit) may summon before it and examine or cause to be examined witnesses by word of mouth, and either before or after examination by deposition, or before a commissioner, as hereinafter mentioned; and notes of such evidence shall be taken down in writing by the Judge or registrar, or by such other person or persons, and in such manner, as the Judge of the said Court shall direct.

Evidence may be taken *in* *roce* before a commissioner.

8. And be it enacted, that the said Court may, if it shall think fit, in any such suit issue one or more special commissions to some person, being an advocate of the said High Court of Admiralty of not less than seven years' standing, or a barrister-at-law of not less than seven years' standing, to take evidence by word of mouth, upon oath, which every such commissioner is hereby empowered to administer, at such time or times, place or places, and as to such fact or facts, and in such manner, order and course, and under such limitations and restrictions, and to transmit the same to the registry of the said Court, in such form and manner as in and by the commission shall be directed; and that such commissioner shall be attended, and the witnesses shall be examined, cross-examined, and re-examined by the parties, their counsel, proctors or agents, if such parties, or either of them, shall think fit so to do; and such commission shall, if need be, make a special report to the Court touching such examination, and the conduct or absence of any witness or other person thereon or relating thereto; and the said High Court of Admiralty is hereby authorized to institute such proceedings, and make such order or orders, upon such report, as justice may require, and as may be instituted or made in any case of contempt of the said Court.

Attendance of witnesses and produc-

9. And be it enacted, that it shall be lawful in any suit depending in the said Court of Admiralty for the Judge of the said Court, or for

any such commissioner appointed in pursuance of this Act, to require the attendance of any witnesses, and the production of any deeds, evidences, books or writings, by writ, to be issued by such Judge or commissioner in such and the same form, or as nearly as may be, as that in which a writ of *subpoena ad testificandum*, or of *subpoena duces tecum*, is now issued by her Majesty's Court of Queen's Bench at Westminster; and that every person disobeying any such writ so to be issued by the said Judge or commissioner shall be considered as in contempt of the said High Court of Admiralty, and may be punished for such contempt in the said Court.

10. And be it enacted, that all the provisions of an Act passed in the fourth year of the reign of his late Majesty, intituled "An Act for the further Amendment of the Law, and better Administration of Justice," with respect to the admissibility of the evidence of witnesses interested on account of the verdict or judgment, shall extend to the admissibility of evidence in any suit pending in the said Court of Admiralty, and the entry directed by the said Act to be made on the record of judgment shall be made upon the document containing the final sentence of the said Court, and shall have the like effect as the entry on such record.

11. And be it enacted, that in any contested suit depending in the said Court of Admiralty, the said Court shall have power, if it shall think fit so to do, to direct a trial by jury of any issue or issues on any question or questions of fact arising in any such suit, and that the substance and form of such issue or issues shall be specified by the Judge of the said Court at the time of directing the same; and if the parties differ in drawing such issue or issues, it shall be referred to the Judge of the said Court to settle the same; and such trial shall be had before some Judge of her Majesty's Superior Courts of Common Law at Westminster, at the sittings at nisi prius in London or Middlesex, or before some Judge of assize at nisi prius, as to the said Court shall seem fit.

12. And be it enacted, that the cost of such issues, or of such commission as aforesaid, as the Judge of the said High Court of Admiralty shall under this Act direct, shall be paid by such party or parties, person or persons, and be taxed by the registrar of the said High Court of Admiralty, in such manner as the said Judge shall direct, and that payment of such costs shall be enforced in the same manner as costs between party and party may be enforced in other proceedings in the said Court.

13. And be it enacted, that the said Court of Admiralty, upon application to be made within three calendar months after the trial of any such issue by any party concerned, may grant and direct one or more new trials of any such issue, and may order such new trial to take place in the manner hereinbefore directed with regard to the first trial of such issue, and may by order of the same Court direct such costs to be paid as to the said Court shall seem fit upon any application for a new trial, or upon any new trial, or second or other new trial, and may direct by whom and to whom and at what times and in what manner such costs shall be paid.

14. And be it enacted, that the granting or refusing to grant an issue, or a new trial of any such issue, may be matter of appeal to her Majesty in Council.

A. C. Act,  
1840.

tion of  
papers may  
be com-  
pelled by  
subpoena.

Provisions  
of 3 & 4 Will.  
4, c. 42, ex-  
tended to  
Court of  
Admiralty.

Power to  
direct  
issues.

Costs of  
issues and  
commis-  
sions to be  
in the dis-  
cretion of  
the Court.

Power to  
direct new  
trials.

Granting  
refusing  
new trial,  
matter of  
appeal.

**A. C. Act,  
1840.**

Bills of exceptions to be allowed on trials of issues.

Record of the issue to be transmitted to the Court of Admiralty.

Provisions of 2 & 3 Will. 4, c. 92, as to appeals to apply to suits in Court of Admiralty under this Act.

3 & 4 Will. 4, c. 41, to apply in same manner.

Certified notes of evidence taken may be admitted on appeal.

Power for Judge of Admiralty to make

15. And be it enacted, that at the trial of any issue directed by the said High Court of Admiralty, either party shall have all the like powers, rights and remedies with respect to bills of exceptions as parties impleaded before justices may have, by virtue of the statute made in that behalf in the thirteenth year of the reign of King Edward the First, with respect to exceptions alleged by them before such justices, or by any other statute made in the like behalf; and every such bill of exceptions, sealed with the seal of the Judge or Judges to whom such exceptions shall have been made, shall be annexed to the record of the trial of the said issue.

16. And be it enacted, that the record of the said issue, and of the verdict therein, shall be transmitted by the associate or other proper officer to the registrar of the said Court of Admiralty; and the verdict of the jury upon any such issue (unless the same shall be set aside) shall be conclusive upon the said Court and upon all such persons; and in all further proceedings in the cause in which such fact is found the said Court shall assume such fact to be as found by the jury.

17. And be it enacted, that every person who, if this Act had not been passed, might have appealed and made suit to her Majesty in Council against any proceeding, decree, or sentence of the said High Court of Admiralty under or by virtue of an Act passed in the third year of the reign of his late Majesty, intituled "An Act for Transferring the Powers of the High Court of Delegates, both in Ecclesiastical and Maritime Causes, to his Majesty in Council," may in like manner appeal and make suits to her Majesty in Council against the proceedings, decrees and sentences of the said Court in all suits instituted and proceedings had in the same by virtue of the provisions of this Act, and that all the provisions of the said last-mentioned Act shall apply to all appeals and suits against the proceedings, decrees and sentences of the said Court in suits instituted and proceedings had by virtue of the provisions of this Act; and such appeals and suits shall be proceeded in in the manner and form provided by an Act passed in the fourth year of the reign of his late Majesty, intituled "An Act for the better Administration of Justice in his Majesty's Privy Council;" and all the provisions of the said last-mentioned Act relating to appeals and suits from the High Court of Admiralty shall be applied to appeals and suits from the said Court in suits instituted and proceedings had by virtue of the provisions of this Act: provided always, that in any such appeal the notice of evidence taken as hereinbefore provided by or under the direction of the Judge of the said High Court of Admiralty shall be certified by the said Judge of her Majesty in Council, and shall be admitted to prove the oral evidence given in the said Court of Admiralty, and that no evidence shall be admitted on such appeal to contradict the notes of evidence so taken and certified as aforesaid, but this proviso shall not enure to prevent the Judicial Committee of the Privy Council from directing witnesses to be examined and re-examined upon such facts as to the committee shall seem fit, in the manner directed by the last-recited Act.

18. And be it enacted, that it shall be lawful for the Judge of the High Court of Admiralty from time to time to make such rules, orders and regulations respecting the practice and mode of proceed-

ing of the said Court, and the conduct and duties of the officers and practitioners therein, as to him shall seem fit, and from time to time to repeal or alter such rules, orders or regulations : provided always, that no such rules, orders or regulations shall be of any force or effect until the same shall have been approved by her Majesty in Council.

**A. C. Act,  
1840.**

rules of  
Court.

19. And be it declared and enacted, that no action shall lie against the Judge of the said High Court of Admiralty for error in judgment, and that the said Judge shall be entitled to and have all privileges and protections in the exercise of his jurisdiction as Judge of the said Court which by law appertain to the Judges of her Majesty's Superior Courts of Common Law in the exercise of their several jurisdictions.

Protection  
of the Judge  
of the Court  
of Admi-  
ralty.

20. And be it enacted, that the keeper for the time being of every common gaol or prison shall be bound to receive and take into his custody all persons who shall be committed thereunto by the said Court of Admiralty, or who shall be committed thereunto by any coroner appointed by the Judge of the said Court of Admiralty, upon any inquest taken within or upon the high seas adjacent to the county or other jurisdiction to which such gaol or prison belongs ; and every keeper of any gaol or prison who shall refuse to receive into his custody any person so committed, or wilfully or carelessly suffer such person to escape and go at large without lawful warrant, shall be liable to the like penalties and consequences as if such person had been committed to his custody by any other lawful authority.

Gaolers to  
receive pri-  
soners com-  
mitted by  
the Court of  
Admiralty  
or by Ad-  
miralty  
coroners.

21. And be it enacted, that it shall be lawful for the Judge of the said High Court of Admiralty to order the discharge of any person who shall be in custody for contempt of the said Court, for any cause other than for non-payment of money, on such conditions as to the Judge shall seem just : provided always, that the order for such discharge shall not be deemed to have purged the original contempt in case the conditions on which such order shall be made be not fulfilled.

Prisoners in  
contempt  
may be  
discharged.

22. And be it enacted, that the said High Court of Admiralty shall have jurisdiction to decide all matters and questions concerning booty of war, or the distribution thereof, which it shall please her Majesty, her heirs and successors, by the advice of her and their Privy Council, to refer to the judgment of the said Court ; and in all matters so referred the Court shall proceed as in cases of prize of war, and the judgment of the Court therein shall be binding upon all parties concerned.

Jurisdiction  
to try ques-  
tions con-  
cerning  
booty of  
war.

23. Provided always, and be it enacted, that nothing herein contained shall be deemed to preclude any of her Majesty's Courts of Law or Equity now having jurisdiction over the several subject matters and causes of action hereinbefore mentioned from continuing to exercise such jurisdiction as fully as if this Act had not been passed.

Jurisdiction  
of Courts of  
Law and  
Equity not  
taken away

## THE ADMIRALTY COURT ACT, 1861.

24 VICT. CAP. 10.

- A. C. Act, 1861.** WHEREAS it is expedient to extend the jurisdiction and improve the practice of the High Court of Admiralty of England: be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:
- Short title.** 1. This Act may be cited for all purposes as "The Admiralty Court Act, 1861."
- Interpretation of terms.** 2. In the interpretation and for the purposes of this Act (if not inconsistent with the context or subject) the following terms shall have the respective meanings hereinafter assigned to them; that is to say,  
 "Ship" shall include any description of vessel used in navigation not propelled by oars:  
 "Cause" shall include any cause, suit, action, or other proceeding in the Court of Admiralty.
- Commencement of Act.** 3. This Act shall come into operation on the first day of June one thousand eight hundred and sixty-one.
- As to claims for building, equipping, or repairing of ships.** 4. The High Court of Admiralty shall have jurisdiction over any claim for the building, equipping, or repairing of any ship, if at the time of the institution of the cause the ship or the proceeds thereof are under arrest of the Court.
- As to claims for necessaries.** 5. The High Court of Admiralty shall have jurisdiction over any claim for necessaries supplied to any ship elsewhere than in the port to which the ship belongs, unless it is shown to the satisfaction of the Court that at the time of the institution of the cause any owner or part-owner of the ship is domiciled in England or Wales: provided always, that if in any such cause the plaintiff do not recover twenty pounds he shall not be entitled to any costs, charges, or expenses incurred by him therein, unless the Judge shall certify that the cause was a fit one to be tried in the said Court.
- As to claims for damage to cargo imported.** 6. The High Court of Admiralty shall have jurisdiction over any claim by the owner or consignee or assignee of any bill of lading of any goods carried into any port in England or Wales in any ship, for damage done to the goods or any part thereof by the negligence or misconduct of or for any breach of duty or breach of contract on the part of the owner, master, or crew of the ship, unless it is shown to the satisfaction of the Court that at the time of the institution of the cause any owner or part-owner of the ship is domiciled in England or Wales: provided always, that if in any such cause the plaintiff do not recover twenty pounds he shall not be entitled to any costs, charges, or expenses incurred by him therein, unless the Judge shall certify that the cause was a fit one to be tried in the said Court.
- As to claims for damage by any ship.** 7. The High Court of Admiralty shall have jurisdiction over any claim for damage done by any ship.

8. The High Court of Admiralty shall have jurisdiction to decide all questions arising between the co-owners, or any of them, touching the ownership, possession, employment, and earnings of any ship registered at any port in England or Wales, or any share thereof, and may settle all accounts outstanding and unsettled between the parties in relation thereto, and may direct the said ship or any share thereof to be sold, and may make such order in the premises as to it shall seem fit.

**A. C. Act,  
1861.**

High Court of Admiralty to decide questions as to ownership, &c., of ships.

9. All the provisions of "The Merchant Shipping Act, 1854," in regard to salvage of life from any ship or boat within the limits of the United Kingdom, shall be extended to the salvage of life from any British ship or boat, wheresoever the services may have been rendered, and from any foreign ship or boat, where the services have been rendered either wholly or in part in British waters.

Extending 17 & 18 Vict. c. 104, as to claims for salvage of life.

10. The High Court of Admiralty shall have jurisdiction over any claim by a seaman of any ship for wages earned by him on board the ship, whether the same be due under a special contract or otherwise, and also over any claim by the master of any ship for wages earned by him on board the ship, and for disbursements made by him on account of the ship: provided always, that if in any such cause the plaintiff do not recover fifty pounds, he shall not be entitled to any costs, charges, or expenses incurred by him therein, unless the Judge shall certify that the cause was a fit one to be tried in the said Court.

As to claims for wages and for disbursements by master of a ship.

11. The High Court of Admiralty shall have jurisdiction over any claim in respect of any mortgage duly registered according to the provisions of "The Merchant Shipping Act, 1854," whether the ship or the proceeds thereof be under arrest of the said Court or not.

8 & 4 Vict. c. 65, in regard to mortgages extended to Court of Admiralty.

12. The High Court of Admiralty shall have the same powers over any British ship, or any share therein, as are conferred upon the High Court of Chancery in England by the sixty-second, sixty-third, sixty-fourth, and sixty-fifth sections of "The Merchant Shipping Act, 1854."

Sections 62 to 65 of 17 & 18 Vict. c. 104, extended to Court of Admiralty.

13. Whenever any ship or vessel, or the proceeds thereof, are under arrest of the High Court of Admiralty, the said Court shall have the same powers as are conferred upon the High Court of Chancery in England by the ninth part of "The Merchant Shipping Act, 1854."

Part 9 of 17 & 18 Vict. c. 104, extended to Court of Admiralty.

14. The High Court of Admiralty shall be a Court of Record for all intents and purposes.

Court to be a Court of Record.

15. All decrees and orders of the High Court of Admiralty, whereby any sum of money, or any costs, charges, or expenses, shall be payable to any person, shall have the same effect as judgments in the Superior Courts of Common Law, and the persons to whom any such moneys, or costs, charges, or expenses, shall be payable, shall be deemed judgment creditors, and all powers of enforcing judgments possessed by the Superior Courts of Common Law, or any Judge thereof, with respect to matters depending in the same Courts, as well against the ships and goods arrested as against the person of the judgment debtor, shall be possessed by the said Court of Admiralty with respect to matters therein depending; and all remedies at common law possessed by judgment creditors shall be

Decrees and orders of Court of Admiralty to have effect of judgments at common law.

**A. C. Act, 1861.** in like manner possessed by persons to whom any moneys, costs, charges, or expenses are by such orders or decrees of the said Court of Admiralty directed to be paid.

As to claims to goods taken in execution.

16. If any claim shall be made to any goods or chattels taken in execution under any process of the High Court of Admiralty, or in respect of the seizure thereof, or any Act or matter connected therewith, or in respect of the proceeds or value of any such goods or chattels, by any landlord for rent, or by any person not being the party against whom the process has issued, the registrar of the said Court may, upon application of the officer charged with the execution of the process, whether before or after any action brought against such officer, issue a summons calling before the said Court both the party issuing such process and the party making the claim, and thereupon any action which shall have been brought in any of her Majesty's Superior Courts of Record, or in any local or inferior Court, in respect of such claim, seizure, act, or matter as aforesaid, shall be stayed, and the Court in which such action shall have been brought, or any Judge thereof, on proof of the issue of such summons, and that the goods and chattels were so taken in execution, may order the party bringing the action to pay the costs of all proceedings had upon the action after issue of the summons out of the said Admiralty Court, and the Judge of the said Admiralty Court shall adjudicate upon the claim, and make such order between the parties in respect thereof and of the costs of the proceedings, as to him shall seem fit, and such order shall be enforced in like manner as any order made in any suit brought in the said Court. Where any such claim shall be made as aforesaid the claimant may deposit with the officer charged with the execution of the process either the amount or value of the goods claimed, the value to be fixed by appraisement in case of dispute, to be by the officer paid into Court to abide the decision of the Judge upon the claim, or the sum which the officer shall be allowed to charge as costs for keeping possession of the goods until such decision can be obtained, and in default of the claimant so doing the officer may sell the goods as if no such claim had been made, and shall pay into Court the proceeds of the sale, to abide the decision of the Judge.

Powers of Superior Courts extended to Court of Admiralty.

17. The Judge of the High Court of Admiralty shall have all such powers as are possessed by any of the Superior Courts of Common Law or any Judge thereof to compel either party in any cause or matter to answer interrogatories, and to enforce the production, inspection, and delivery of copies of any document in his possession or power.

Party in Court of Admiralty may apply for an order for inspection by Trinity masters.

18. Any party in a cause in the High Court of Admiralty shall be at liberty to apply to the said Court for an order for the inspection by the Trinity masters or others appointed for the trial of the said cause, or by the party himself or his witnesses, of any ship or other personal or real property, the inspection of which may be material to the issue of the cause, and the Court may make such order in respect of the costs arising thereout as to it shall seem fit.

Admission of documents.

19. Any party in a cause in the High Court of Admiralty may call on any other party in the cause by notice in writing to admit any document, saving all just exceptions, and in case of refusal or neglect to admit, the costs of proving the document shall be paid by

the party so neglecting or refusing, whatever the result of the cause may be, unless at the trial the Judge shall certify that the refusal to admit was reasonable. **A. C. Act, 1861.**

20. Whenever it shall be made to appear to the Judge of the High Court of Admiralty that reasonable efforts have been made to effect personal service of any citation, monition, or other process issued under seal of the said Court, and either that the same has come to the knowledge of the party thereby cited or monished, or that he wilfully evades service of the same, and has not appeared thereto, the said Judge may order that the party on whose behalf the citation, monition, or other process was issued be at liberty to proceed as if personal service had been effected, subject to such conditions as to the Judge may seem fit, and all proceedings thereon shall be as effectual as if personal service of such citation, monition, or other process had been effected.

Power to Court of Admiralty when personal service of citation has not been effected to order parties to proceed.

21. The service in any part of Great Britain or Ireland of any writ of *subpoena ad testificandum* or *subpoena duces tecum*, issued under seal of the High Court of Admiralty, shall be as effectual as if the same had been served in England or Wales.

As to the service of subpoena out of England and Wales.

22. Any new writ or other process necessary or expedient for giving effect to any of the provisions of this Act may be issued from the High Court of Admiralty in such form as the Judge of the said Court shall from time to time direct.

Power to issue new writs or other process.

23. All the powers possessed by any of the Superior Courts of Common Law or any Judge thereof, under the Common Law Procedure Act, 1854, and otherwise, with regard to references to arbitration, proceedings thereon, and the enforcing of awards of arbitrators shall be possessed by the Judge of the High Court of Admiralty in all causes and matters depending in the said Court, and the registrar of the said Court of Admiralty shall possess as to such matters the same powers as are possessed by the masters of the said Superior Courts of Common Law in relation thereto.

Judge and registrar to have same power as to arbitration as Judges and masters at common law.

24. The registrar of the High Court of Admiralty shall have the same powers under the fifteenth section of the Merchant Shipping Act, 1854, as are by the said section conferred on the masters of her Majesty's Court of Queen's Bench in England and Ireland.

Section 15 of 17 & 18 Vict. c. 104, extended to registrar of Court of Admiralty.

25. The registrar of the High Court of Admiralty may exercise, with reference to causes and matters in the said Court, the same powers as any surrogate of the Judge of the said Court sitting in chambers might or could have heretofore lawfully exercised; and all powers and authorities by this or any other Act conferred upon or vested in the registrar of the said High Court of Admiralty may be exercised by any deputy or assistant registrar of the said Court.

Powers of registrar and of deputy or assistant registrar.

26. The registrar of the said Court of Admiralty shall have power to administer oaths in relation to any cause or matter depending in the said Court; and any person who shall wilfully depose or affirm falsely in any proceeding before the registrar or before any deputy or assistant registrar of the said Court, or before any person authorized to administer oaths in the said Court, shall be deemed to be guilty of perjury, and shall be liable to all the pains and penalties attaching to wilful and corrupt perjury.

False oath or affirmation deemed perjury.

27. Any advocate, barrister-at-law, proctor, attorney, or solicitor of Appoint-



**A. C. Act, 1861.** ten years' standing may be appointed registrar or assistant or deputy registrar of the said Court.

**28.** Any advocate, barrister-at-law, proctor, attorney, or solicitor may be appointed an examiner of the High Court of Admiralty.

**29.** Any person who shall have paid on his admission in any Court as a proctor, solicitor, or attorney the full stamp duty of twenty-five pounds, and who has been or shall hereafter be admitted a proctor, solicitor, or attorney (if in other respects entitled to be so admitted), shall be liable to no further stamp duty in respect of such subsequent admission.

**30.** Any proctor of the High Court of Admiralty may act as agent of any attorney or solicitor, and allow him to participate in the profits of and incident to any cause or matter depending in or connected with the said Court; and nothing contained in the Act of the fifty-fifth year of the reign of King George the Third, chapter one hundred and sixty, shall be construed to extend to prevent any proctor from so doing, or to render him liable to any penalty in respect thereof.

**31.** The Act passed in the second year of the reign of King Henry the Fourth, intituled "A Remedy for Him who is Wrongfully Pursued in the Court of Admiralty," is hereby repealed.

**32.** Any party aggrieved by any order or decree of the Judge of the said Court of Admiralty, whether made *ex parte* or otherwise, may, with the permission of the Judge, appeal therefrom to her Majesty in Council, as fully and effectually as from any final decree or sentence of the said Court.

**33.** In any cause in the High Court of Admiralty bail may be taken to answer the judgment as well of the said Court as of the Court of Appeal, and the said High Court of Admiralty may withhold the release of any property under its arrest until such bail has been given; and in any appeal from any decree or order of the High Court of Admiralty, the Court of Appeal may make and enforce its order against the surety or sureties who may have signed any such bail bond in the same manner as if the bail had been given in the Court of Appeal.

**34.** The High Court of Admiralty may, on the application of the defendant in any cause of damage, and on his instituting a cross cause for the damage sustained by him in respect of the same collision, direct that the principal cause and the cross cause be heard at the same time and upon the same evidence; and if in the principal cause the ship of the defendant has been arrested, or security given by him to answer judgment, and in the cross cause the ship of the plaintiff cannot be arrested, and security has not been given to answer judgment therein, the Court may, if it think fit, suspend the proceedings in the principal cause until security has been given to answer judgment in the cross cause.

**35.** The jurisdiction conferred by this Act on the High Court of Admiralty may be exercised either by proceedings *in rem* or by proceedings *in personam*.

ment of registrar and of deputy or assistant registrar.

Appointment of examiners.

Stamp duty not payable on subsequent admissions of proctors or solicitors.

Proctor may act as agent of solicitors.

2 Hen. 4, c. 11, repealed.

Power of appeal in interlocutory matters.

Bail given in the Court of Admiralty good in the Court of Appeal.

As to the hearing of causes and cross causes.

Jurisdiction of the Court.

## PART II.

## STATUTES RELATING TO THE COUNTY COURTS.

## COUNTY COURTS ADMIRALTY JURISDICTION ACT, 1868.

31 &amp; 32 VICT. CAP. 71.

*An Act for conferring Admiralty Jurisdiction on the County Courts.* C. C. Act, 1868.  
[31st July, 1868.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the County Courts Admiralty Jurisdiction Act, 1868. Short title.

2. If at any time after the passing of this Act it appears to her Majesty in Council, on the representation of the Lord Chancellor, expedient that any County Court should have Admiralty jurisdiction, it shall be lawful for her Majesty by Order in Council, to appoint that Court to have Admiralty jurisdiction accordingly, and to assign to that Court as its district for Admiralty purposes any part or parts of any one or more district or districts of County Courts; and the district so constituted for that Court, with the parts of the sea (if any) adjacent to that district to a distance of three miles from the shore thereof, shall be deemed its district for Admiralty purposes; and accordingly the Judge and all officers of the Court shall have jurisdiction and authority for those purposes throughout that district, as if the same was the district of the Court for all purposes; and, from a time to be specified in each such order, this Act shall have effect in and throughout the district so constituted; and any such order may be from time to time varied as seems expedient; and a County Court so appointed to have Admiralty jurisdiction, and no other County Court, shall, for the purposes of this Act, be deemed a County Court having Admiralty jurisdiction: Provided that no Judge of a County Court, except the Judges of the London Court, shall have jurisdiction in the City of London. Appointment of County Courts for Admiralty purposes.

3. Any County Court having Admiralty jurisdiction shall have Extent of

**C. C. Act,  
1868.**

Admiralty  
jurisdiction  
of County  
Courts.

jurisdiction, and all powers and authorities relating thereto, to try and determine, subject and according to the provisions of this Act, the following causes (in this Act referred to as Admiralty causes):

- (1.) As to any claim for salvage—any cause in which the value of the property saved does not exceed one thousand pounds, or in which the amount claimed does not exceed three hundred pounds:
- (2.) As to any claim for towage, necessaries, or wages—any cause in which the amount claimed does not exceed one hundred and fifty pounds:
- (3.) As to any claim for damage to cargo, or damage by collision—any cause in which the amount claimed does not exceed three hundred pounds:
- (4.) Any cause in respect of any such claim or claims as aforesaid, but in which the value of the property saved or the amount claimed is beyond the amount limited as above mentioned, when the parties agree by a memorandum signed by them or by their attorneys or agents that any County Court having Admiralty jurisdiction, and specified in the memorandum, shall have jurisdiction.

Restrictions  
on County  
Court jurisdic-  
tion in  
certain  
cases.

No County  
Court other  
than that  
appointed  
to have  
jurisdiction.

As to  
transfer  
from  
County  
Court by  
order of  
High Court  
of Admi-  
ralty.

As to  
transfer of  
causes by  
order of  
County  
Court to  
High Court  
of Admi-  
ralty.

As to  
transfer of  
causes to  
other  
County

4. Nothing in this Act, or in any Order in Council under it, shall confer on a County Court jurisdiction in any prize cause, or in any other matter within the Naval Prize Act, 1864, or in any matter arising under any of the Acts for the suppression of the slave trade, or any Admiralty jurisdiction by way of appeal.

5. From and after the time specified in each Order in Council under this Act appointing a County Court to have Admiralty jurisdiction within any district as the time from which this Act shall have effect in and throughout that district, no County Court, other than the County Court so appointed, shall have jurisdiction within that district in any Admiralty cause: Provided that all Admiralty causes at that time pending in any County Court within that district may be continued as if no such Order in Council had been made.

6. The High Court of Admiralty of England, on motion by any party to an Admiralty cause pending in a County Court, may, if it shall think fit, with previous notice to the other party, transfer the cause to the High Court of Admiralty, and may order security for costs, or impose such other terms as to the Court may seem fit.

7. If during the progress of an Admiralty cause in a County Court it appears to the Court that the subject matter exceeds the limit in respect of amount of the Admiralty jurisdiction of the Court, the validity of any order or decree theretofore made by the Court shall not be thereby affected, but (unless the parties agree, by a memorandum signed by them or by their attorneys or agents, that the Court shall retain jurisdiction) the Court shall by order transfer the cause to the High Court of Admiralty; but that Court may, nevertheless, if the Judge of that Court in any case thinks fit, order that the cause shall be prosecuted in the County Court in which it was commenced, and it shall be prosecuted accordingly.

8. If during the progress of an Admiralty cause in a County Court it shall appear to the Court that the cause could be more conveniently prosecuted in some other County Court, or in the High Court of Admiralty of England, the Court may by order transfer it to such

other County Court, or to the High Court of Admiralty of England, as the case may be, and the cause shall thenceforward be so prosecuted accordingly.

**C. C. Act,  
1868.**

9. If any person shall take in the High Court of Admiralty of England, or in any Superior Court, proceedings which he might, without agreement, have taken in a County Court, except by order of the Judge of the High Court of Admiralty or of such Superior Court or of a County Court having Admiralty jurisdiction, and shall not recover a sum exceeding the amount to which the jurisdiction of the County Court in that Admiralty cause is limited by this Act, and also if any person without agreement shall, except by order as aforesaid, take proceedings as to salvage in the High Court of Admiralty or in any Superior Court in respect of property saved, the value of which when saved does not exceed one thousand pounds, he shall not be entitled to costs, and shall be liable to be condemned in costs, unless the Judge of the High Court of Admiralty or of a Superior Court before whom the cause is tried or heard shall certify that it was a proper Admiralty cause to be tried in the High Court of Admiralty of England or in a Superior Court.

**Courts or  
Court of  
Admiralty.  
Restrictions  
on pro-  
ceedings in  
the Court of  
Admiralty  
or Superior  
Court.**

10. In an Admiralty cause in a County Court the cause shall be heard and determined in like manner as ordinary civil causes are now heard and determined in County Courts; save and except that in any Admiralty cause of salvage, towage, or collision the County Court Judge shall, if he think fit, or on the request of either party to such cause, be assisted by two nautical assessors in the same way as the Judge of the High Court of Admiralty is now assisted by nautical assessors.

**Powers, &c.,  
of Judges  
and registra-  
rars.**

11. In any such Admiralty cause as last aforesaid it shall be lawful for the Judge of the County Court, if he think fit, and he shall, upon request of either party, summon to his assistance in such manner as general orders shall direct, two nautical assessors, and such nautical assessors shall attend and assist accordingly.

**Power to  
Judge of  
County  
Court to  
summon  
nautical  
assessors to  
his assist-  
ance.**

12. The decree of the County Court in an Admiralty cause shall be enforced against the person or persons summoned as the defendant or defendants in the same manner as the decrees of the said Court are enforced in ordinary civil causes, save and except as in this Act otherwise provided.

**Decrees in  
County  
Courts in  
Admiralty  
causes to  
have same  
force as  
those in  
civil causes.  
Admiralty  
causes to be  
heard at  
usual Courts.**

13. The Judge of every County Court having Admiralty jurisdiction shall hear and determine Admiralty causes at the usual Courts held within his jurisdiction, or at special Courts to be held by him, and which he is hereby required to hold as soon as may be after he shall have had notice of an Admiralty cause having arisen within the jurisdiction of his Court.

**Appoint-  
ment of  
assessors in  
County  
Court.**

14. The registrar of each County Court having Admiralty jurisdiction shall from time to time frame a list, to be approved by the Judge of the High Court of Admiralty before whom the same shall be laid by the County Court Judge, and without whose approval it shall have no validity, of assessors, of persons of nautical skill and experience residing or having places of business within the district of the County Court, to act as assessors in that Court, and shall cause the list to be published in the "London Gazette."

15. Every person named in the list of assessors so framed and approved shall attend the County Court under such circumstances,

**Attendance  
of assessors.**

**C. C. Act,  
1868.**

- and in such rotation, and subject to such regulations, and shall receive such fees for his attendance, as general orders shall direct, and for every wilful non-attendance shall be liable, at the discretion of the Court, to a penalty not exceeding five pounds.
- 16.** Every assessor named in such list shall hold his office until a new list of assessors shall have been framed and approved as aforesaid, or until he shall resign his appointment.
- 17.** The registrars of the County Courts shall be remunerated for their duties in Admiralty causes by receiving for their own use such fees as general orders shall direct.
- 18.** A scale of costs and charges in Admiralty causes in the County Courts shall be prescribed by general orders.
- 19.** The registrar of a County Court shall have power to administer oaths in relation to any Admiralty cause in a County Court; and any person who shall wilfully depose or affirm falsely before the registrar in any Admiralty cause shall be deemed to be guilty of perjury, and shall be liable to all the pains and penalties attaching to wilful and corrupt perjury.
- 20.** Evidence taken in any Admiralty cause before the registrar of a County Court, as the Judge of a County Court or general orders shall direct, shall be received as evidence in any other County Court, saving all just exceptions; and the registrar of any County Court shall, for the purpose of the examination of any witnesses within the district of that Court, have all and the like powers and authorities of an examiner of the High Court of Admiralty of England, and evidence taken by him in that capacity shall be received as evidence in the High Court of Admiralty of England, saving all just exceptions.
- 21.** Proceedings in an Admiralty cause shall be commenced—
- (1.) In the County Court having Admiralty jurisdiction within the district of which the vessel or property to which the cause relates is at the commencement of the proceedings :
  - (2.) If the foregoing rule be not applicable, then in the County Court having Admiralty jurisdiction in the district of which the owner of the vessel or property to which the cause relates, or his agent in England, resides, or if such owner or agent does not reside within any such district, then in the County Court having Admiralty jurisdiction the district whereof is nearest to the place where such owner or agent resides :
  - (3.) If for any reason the last foregoing rule is not applicable or cannot be acted on, then in such County Court having Admiralty jurisdiction as general orders direct :
  - (4.) In any case in the County Court or one of the County Courts having Admiralty jurisdiction in which the parties by a memorandum, signed by them or by their attorneys or agents, agree shall have jurisdiction in the cause.
- 22.** In an Admiralty cause in a County Court if evidence be given to the satisfaction of the Judge, or in his absence the registrar of the Court, that it is probable that the vessel or property to which the cause relates will be removed out of the jurisdiction of the Court before the plaintiff's claim is satisfied, it shall be lawful for the said Judge, or in his absence for the registrar, to issue a warrant for the

Removal of assessors.

Remuneration of registrars.

Scale of costs.

Power to registrars to administer oaths and take evidence.

Evidence before registrar receivable in Admiralty Court.

As to proceedings in County Court for commencement of cause.

Limitation of arrest.

arrest and detention of the said vessel or property, unless or until bail to the amount of the claim made in such cause, and to the reasonable costs of the plaintiff in such cause, be entered into and perfected, according to general orders, by or on behalf of the owner of the vessel or property or his agent, or other the defendant in such cause; and, except as in this section expressly provided, there shall be no arrest or detention of a vessel or property in an Admiralty cause in a County Court otherwise than in execution. C. C. Act,  
1868.

23. For the execution of any decree or order of a County Court in an Admiralty cause the Court may order, and the registrar on such order may seal and issue, and any officer of any County Court may execute, process according to general orders; provided that where under such process a vessel or property would or might be sold, then, if the owner of the vessel or property desires that the sale should be conducted in the High Court of Admiralty instead of in the County Court, he shall be entitled, on security for costs being first given, and subject and according to such other provisions as general orders direct, to obtain an order of the County Court for transfer of the proceedings for sale, with or without (as the Judge of the County Court thinks fit) the transfer of the subsequent proceedings in the cause, to the High Court of Admiralty, which Court shall have jurisdiction and all powers and authorities relating thereto accordingly. Power to  
issue  
process.

24. Such decrees and orders of County Courts in Admiralty causes as general orders shall direct, shall be registered with the registrar of County Court judgments in London in such manner as general orders shall direct. Registra-  
tion of  
decrees and  
orders.

25. The Court of Passage of the borough of Liverpool shall, upon an Order in Council being made which shall appoint the County Court of Lancashire holden at Liverpool to have Admiralty jurisdiction, have the like jurisdiction, powers, and authorities as by that order are conferred on the said County Court; but nothing herein shall be deemed to enlarge the area over which the jurisdiction of the Court of Passage extends, or to alter the rules and regulations for holding the said Court, or to take away or restrict any jurisdiction, power, or authority already vested in that Court; and fees received in that Court under this Act shall be dealt with as fees received in that Court under its ordinary jurisdiction. Concurrent  
jurisdiction  
of the Court  
of Passage.

26. An appeal may be made to the High Court of Admiralty of England from a final decree or order of a County Court in an Admiralty cause, and, by permission of the Judge of the County Court, from any interlocutory decree or order therein, on security for costs being first given, and subject to such other provisions as general orders shall direct. Appeal to  
Court of  
Admiralty.

27. No appeal shall be allowed unless the instrument of appeal is lodged in the registry of the High Court of Admiralty within ten days from the date of the decree or order appealed from, but the Judge of the High Court of Admiralty of England may, on sufficient cause being shown to his satisfaction for such omission, allow an appeal to be prosecuted, notwithstanding that the instrument of appeal has not been lodged within that time. Time for  
appeal.

28. No appeal shall be allowed if, before the decree or order is made, the parties shall have agreed by a memorandum signed by Agreement  
not to  
appeal.

**C. C. Act,  
1868.**

As to appeals  
to the Queen  
in Council.

Costs of  
appeal.

No appeal  
unless  
amount  
exceeds £50.  
Conduct of  
sale, &c., in  
Court of  
Admiralty.

In certain  
cases causes  
may be  
transferred  
by County  
Court and  
appeals  
made to  
Court of  
Admiralty  
of the  
Cinque  
Ports.

County  
Court Acts  
applied to  
this.

Practice,  
&c., to be  
regulated by  
general  
orders.

Authority  
for making  
general  
orders.

them or by their attorneys or agents, that the decree or order shall be final; and any such agreement need not be stamped, except in respect of any fee imposed by general orders.

29. There shall be no appeal from a decree or order of the High Court of Admiralty of England made on appeal from a County Court, except by express permission of the Judge of the High Court of Admiralty.

30. On an appeal under this Act, when the appellant is unsuccessful, he shall pay the costs of the appeal, unless the Appellate Court shall otherwise direct.

31. No appeal shall be allowed unless the amount decreed or ordered to be due exceeds the sum of fifty pounds.

32. On an appeal under this Act, the Judge of the High Court of Admiralty, if it appears to him expedient that any sale decreed or ordered to be made of the vessel or property to which the cause relates should be conducted in the High Court of Admiralty instead of in the County Court from which the appeal is brought, may direct the transfer of the proceedings for sale, with or without the transfer of the subsequent proceedings in the cause, to the High Court of Admiralty, which Court shall have jurisdiction, and all powers and authorities relating thereto accordingly.

33. In all cases which shall arise within the jurisdiction of the Cinque Ports as defined by the Act First and Second George the Fourth, chapter seventy-six, section eighteen, causes may be transferred by the County Court and appeals made to the Court of Admiralty of the Cinque Ports in lieu of the High Court of Admiralty; and in the case of appeals the instrument of appeal shall be lodged in the registry of the Cinque Ports, and the same discretion vested in the judge official and commissary of the said Cinque Ports Court as is by this Act vested in the Judge of the High Court of Admiralty.

34. This Act shall be read as one Act with so much of the County Courts Act, 1846, and the Acts amending or extending the same, as is now in force.

35. General orders shall be from time to time made under this Act for the purposes in this Act directed, and for regulating the practice and procedure of the Admiralty jurisdiction of the County Courts, the forms of processes and proceedings therein or issuing therefrom, and the days and places of sittings for Admiralty causes, the duties of the Judges and officers thereof, and the fees to be taken therein.

36. General orders under this Act shall be made by the Lord Chancellor, with the advice and assistance of the Judge of the High Court of Admiralty of England, and, as far as they relate to fees, or to the receipt and expenditure of and accounting for money, with the approval of the Commissioners of her Majesty's Treasury.

COUNTY COURTS ADMIRALTY JURISDICTION AMENDMENT ACT, 1869.

32 & 33 VICT. CAP. 51.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

- 1.** This Act may be cited as the County Courts Admiralty Jurisdiction Amendment Act, 1869, and shall be read and interpreted as one Act with the County Courts Admiralty Jurisdiction Act, 1868. C. C. Act,  
1869.
- 2.** Any County Court appointed or to be appointed to have Admiralty jurisdiction shall have jurisdiction, and all powers and authorities relating thereto, to try and determine the following causes : Short title.
- (1.) As to any claim arising out of any agreement made in relation to the use or hire of any ship, or in relation to the carriage of goods in any ship, and also as to any claim in tort in respect of goods carried in any ship, provided the amount claimed does not exceed three hundred pounds : Extension of jurisdiction over ships and goods.
- (2.) As to any cause in respect of any such claim or claims as aforesaid, but in which the amount claimed is beyond the amount limited as above mentioned, when the parties agree, by a memorandum signed by them or by their attorneys or agents, that any County Court having Admiralty jurisdiction, and specified in the memorandum, shall have jurisdiction. If parties agree, causes in respect of claims of higher amount may be determined by County Court.
- 3.** The jurisdiction conferred by this Act and by the County Courts Admiralty Jurisdiction Act, 1868, may be exercised either by proceedings *in rem* or by proceedings *in personam*. Proceedings in rem or in personam.
- 4.** The third section of the County Courts Admiralty Jurisdiction Act, 1868, shall extend and apply to all claims for damage to ships, whether by collision or otherwise, when the amount claimed does not exceed three hundred pounds. Amendment of sec. 3 of 31 & 32 Vict. c. 71.
- 5.** In any Admiralty or maritime cause the Judge may, if he think fit, or on the request of either party, be assisted by two mercantile assessors ; and all the provisions of the County Courts Admiralty Jurisdiction Act, 1868, with reference to nautical assessors, shall apply to the appointment, approval, summoning, and remuneration of such mercantile assessors. As to appointment of mercantile assessors.
- 6.** The assessor of the Court of Passage of the borough of Liverpool shall have power from time to time to make general rules and orders for regulating the practice and procedure of the Admiralty and maritime jurisdiction in the said Court, and for other purposes mentioned in section thirty-five of the County Courts Admiralty Jurisdiction Act, 1868 ; and any general rules and orders already made or hereafter to be made by the said assessor for any of the purposes aforesaid shall be of full force and effect as if the same had been made under this or the aforesaid Act. Power of assessor of Court of Passage to make general rules and orders.
- 7.** This Act shall come into operation on the first day of September one thousand eight hundred and sixty-nine. Commencement of Act.



## THE COUNTY COURTS ACT, 1875.

38 &amp; 39 VICT. CAP. 50.

**C. C. Act, 1875.** 10. There shall be no appeal from a decree or order of the High Court of Admiralty of England made on appeal from the County Court when such decree or order affirms the judgment of the County Court, except by express permission of the Judge of the High Court of Admiralty. When upon an appeal the High Court of Admiralty alters the judgment of the County Court no leave to appeal to her Majesty in Council shall be necessary.

11. When an Admiralty cause has been heard in the County Court with the assistance of nautical assessors, elder brethren of the Trinity House shall be summoned to assist on the hearing of an appeal by the High Court of Admiralty, if either party shall require the same and the Judge of the High Court shall be of opinion that the assistance of the elder brethren is necessary or desirable.

## PART III.

## VICE-ADMIRALTY COURTS ACT, 1863.

26 &amp; 27 VICT. CAP. 24.

**Vice-Ad. C. Act, 1863.** 1. This Act may be cited for all purposes as the "Vice-Admiralty Courts Act, 1863."

Short title.  
Interpretation of terms.

"Vice-Admiralty Court" shall mean any of the existing Vice-Admiralty Courts enumerated in the schedule marked A hereto annexed, or any Vice-Admiralty Court which shall hereafter be established in any British possession :

"Ship" shall include every description of vessel used in navigation not propelled by oars only, whether British or foreign :

"Cause" shall include any cause, suit, action or other proceeding instituted in any Vice-Admiralty Court.

Saving the powers of the Admiralty.

7. Nothing in this Act contained shall be taken to affect the power of the Admiralty to appoint any Vice-Admiral, or any Judge, registrar, marshal, or other officer of any Vice-Admiralty Court, as heretofore, by warrant from the Admiralty, and by letters patent issued under seal of the High Court of Admiralty of England.

Jurisdiction of Vice-Admiralty Courts.

10. The matters in respect of which the Vice-Admiralty Courts shall have jurisdiction are as follow :

- (1.) Claims for seamen's wages :
- (2.) Claims for master's wages, and for his disbursements on account of the ship :
- (3.) Claims in respect of pilotage :
- (4.) Claims in respect of salvage of any ship, or of life or goods therefrom :
- (5.) Claims in respect of towage :
- (6.) Claims for damage done by any ship :

- (7.) Claims in respect of bottomry or respondentia bonds : **Vice-Ad. C. Act, 1863.**
- (8.) Claims in respect of any mortgage where the ship has been sold by a decree of the Vice-Admiralty Court, and the proceeds are under its control :
- (9.) Claims between the owners of any ship registered in the possession, in which the Court is established, touching the ownership, possession, employment, or earnings of such ship :
- (10.) Claims for necessaries supplied, in the possession in which the Court is established, to any ship of which no owner or part-owner is domiciled within the possession at the time of the necessaries being supplied :
- (11.) Claims in respect of the building, equipping, or repairing within any British possession of any ship of which no owner or part-owner is domiciled within the possession at the time of the work being done.
11. The Vice-Admiralty Courts shall also have jurisdiction— **Jurisdiction of Vice-Admiralty Courts.**
- (1.) In all cases of breach of the regulations and instructions relating to her Majesty's navy at sea :
- (2.) In all matters arising out of droits of Admiralty.
12. Nothing contained in this Act shall be construed to take away or restrict the jurisdiction conferred upon any Vice-Admiralty Court by any Act of Parliament in respect of seizures for breach of the revenue, customs, trade, or navigation laws, or of the laws relating to the abolition of the slave trade, or to the capture and destruction of pirates and piratical vessels, or any other jurisdiction now lawfully exercised by any such Court, or any jurisdiction now lawfully exercised by any other Court within her Majesty's dominions (a). **Nothing to restrict existing jurisdictions.**
13. The jurisdiction of the Vice-Admiralty Courts, except where it is expressly confined by this Act to matters arising within the possession in which the Court is established, may be exercised, whether the cause or right of action has arisen within or beyond the limits of such possession. **As to matters arising beyond limits of colony.**
14. Her Majesty may, by order in Council, from time to time establish rules touching the practice to be observed in the Vice-Admiralty Courts, as also tables of the fees to be taken by the officers and practitioners thereof for all acts to be done therein, and may repeal and alter the existing and all future rules and tables of fees, and establish new rules and tables of fees in addition thereto, or in lieu thereof. **Her Majesty empowered to establish and alter rules and tables of fees.**
15. A copy of any rules or tables of fees which may at any time be established shall be laid before the House of Commons within three months from the establishing thereof, or if Parliament shall not be then sitting, or if the session shall terminate within one month from that date, then within one month after the commencement of the next session. **Rules and tables of fees to be laid before the House of Commons.**
16. The rules and tables of fees in force in any Vice-Admiralty Court shall, as soon as possible after they have been received in the British possession in which the Court is established, be entered by the registrar in the public books or records of the Court, and the books or records in which they are so entered shall at all reasonable **To be entered in the records of the Courts.**

(a) See Appellate Jurisdiction, 1876, 39 & 40 Vict. c. 59, s. 23.

**Vice-Ad. C. Act, 1863.** times be open to the inspection of the practitioners and suitors in the Court.

To be hung up in Court, &c.

Established fees to be the only fees taken.

Taxation may be revised by the High Court of Admiralty.

Registrar may administer oaths.

As to the hearing of cross causes.

No appeal save from final sentence or order.

Appeal to be made within six months.

Acts repealed. Saving rules established under 2 & 3 W. 4, c. 51.

17. A copy of the rules and tables of fees in force in any Vice-Admiralty Court shall be kept constantly hung up in some conspicuous place as well in the Court as in the office of the registrar.

18. The fees established for any Vice-Admiralty Court shall, after the date fixed for them to come into operation, be the only fees which shall be taken by the officers and practitioners of the Court.

19. Any person who shall feel himself aggrieved by the charges of any of the practitioners in any Vice-Admiralty Court, or by the taxation thereof by the officers of the Court, may apply to the High Court of Admiralty of England to have the charges taxed, or the taxation thereof revised.

20. The registrar of any Vice-Admiralty Court shall have power to administer oaths in relation to any matter depending in the Court; and any person who shall wilfully swear falsely in any proceeding before the registrar, or before any other person authorised to administer oaths in the Court, shall be deemed guilty of perjury, and shall be liable to all the penalties attaching to wilful and corrupt perjury.

21. If a cause of damage by collision be instituted in any Vice-Admiralty Court, and the defendant institute a cross cause in respect of the same collision, the Judge may, on application of either party, direct both causes to be heard at the same time and on the same evidence; and if the ship of the defendant in one of the causes has been arrested, or security given by him to answer judgment, but the ship of the defendant in the other cause cannot be arrested, and security has not been given to answer judgment therein, the Court may, if it think fit, suspend the proceedings in the former cause until security has been given to answer judgment in the latter cause.

22. The appeal from a decree or order of a Vice-Admiralty Court lies to her Majesty in Council; but no appeal shall be allowed, save by permission of the Judge, from any decree or order not having the force or effect of a definitive sentence or final order.

23. The time for appealing from any decree or order of a Vice-Admiralty Court shall, notwithstanding any existing enactment to the contrary, be limited to six months from the date of the decree or order appealed from; and no appeal shall be allowed where the petition of appeal to her Majesty shall not have been lodged in the registry of the High Court of Admiralty and of appeals within that time, unless her Majesty in Council shall, on the report and recommendation of the Judicial Committee of the Privy Council, be pleased to allow the appeal to be prosecuted, notwithstanding that the petition of appeal has not been lodged within the time prescribed.

24. The Acts enumerated in the schedule hereto annexed marked B are hereby repealed, to the extent therein mentioned, but the repeal thereof shall not affect the validity of any rules, orders, regulations, or tables of fees heretofore established and now in force, in pursuance of the Act of the second and third William the Fourth, chapter fifty-one; but such rules, orders, regulations, and tables of fees shall continue in force until repealed or altered under the provisions of this Act.

## SCHEDULE B.

Vice-Ad. C.  
Act, 1863.

## ACTS AND PARTS OF ACTS REPEALED.

Reference to Act.	Title of Act.	Extent of Repeal.
56 Geo. III. c. 82.	An Act to render valid the Judicial Acts of Surrogates of Vice-Admiralty Courts abroad, during Vacancies in Office of Judges of such Courts.	The whole Act, save as regards Her Majesty's Possessions in India.
5 Geo. IV. c. 113.	An Act to amend and consolidate the Laws relating to the Abolition of the Slave Trade.	Section 29, save as above.
2 & 3 Will. IV. c. 51.	An Act to regulate the Practice and the Fees in the Vice-Admiralty Courts abroad, and to obviate doubts as to their Jurisdiction.	The whole Act, save as above.
6 & 7 Vict. c. 38.	An Act to make further regulations for facilitating the hearing Appeals and other matters by the Judicial Committee of the Privy Council.	Section 11, so far as it relates to Appeals from Vice-Admiralty Courts, save as above.
17 & 18 Vict. c. 37.	An Act for establishing the Validity of certain Proceedings in Her Majesty's Court of Vice-Admiralty in Mauritius.	The whole Act.

## PART IV.

## SECTIONS OF MERCHANT SHIPPING ACTS

AS TO

(1) *Salvage.*M. S. Act,  
1854.

## THE MERCHANT SHIPPING ACT, 1854.

17 &amp; 18 Vict. c. 104.

S. 182.  
Stipulation  
by seaman  
to abandon  
right to  
salvage  
inoperative.  
Salvage in  
respect of  
services  
rendered in  
the United  
Kingdom.

. . . every stipulation by which any seaman consents . . .  
to abandon any right which he may have or obtain in the nature of  
salvage shall be wholly inoperative. And see 25 & 26 Vict., c 63, s. 18.

## SALVAGE IN THE UNITED KINGDOM.

**458.** In the following cases ; (that is to say,)

Whenever any ship or boat is stranded or otherwise in distress,  
on the shore of any sea or tidal water situate within the  
limits of the United Kingdom, and services rendered by any  
person,

- (1.) In assisting such ship or boat ;
- (2.) In saving the lives of the persons belonging to such  
ship or boat ;
- (3.) In saving the cargo or apparel of such ship or boat, or  
any portion thereof.

And whenever any wreck is saved by any person other than a  
receiver within the United Kingdom ;

There shall be payable by the owners of such ship or boat, cargo,  
apparel, or wreck, to the person by whom such services or any of  
them are rendered, or by whom such wreck is saved, a reasonable  
amount of salvage, together with all expenses properly incurred by  
him in the performance of such services or the saving of such  
wreck, the amount of such salvage and expenses (which expenses  
are hereinafter included under the term salvage) to be determined  
in case of dispute in manner hereinafter mentioned.

Salvage for  
life may be  
paid by  
Board of  
Trade out of  
Mercantile  
Marine  
Fund.

**459.** Salvage in respect of the preservation of the life or lives  
of any person or persons belonging to any such ship or boat as  
aforesaid shall be payable by the owners of the ship or boat in  
priority to all other claims for salvage ; and in cases where such  
ship or boat is destroyed, or where the value thereof is insufficient,  
after payment of the actual expenses incurred, to pay the amount  
of salvage due in respect of any life or lives, the Board of Trade  
may in its discretion award to the salvors of such life or lives out  
of the Mercantile Marine Fund such sum or sums as it deems fit, in  
whole or part satisfaction of any amount of salvage so left unpaid  
in respect of such life or lives.

Disputes as

**460.** Disputes with respect to salvage arising within the boundaries

of the Cinque Ports shall be determined in the manner in which the same have hitherto been determined; but whenever any dispute arises elsewhere in the United Kingdom between the owners of any such ship, boat, cargo, apparel, or wreck as aforesaid, and the salvors, as to the amount of salvage, and the parties to the dispute cannot agree as to the settlement thereof by arbitration or otherwise,

**M. S. Act,  
1854.**

to salvage,  
how to be  
settled.

Then if the sum claimed does not exceed two hundred pounds,

Such dispute shall be referred to the arbitration of any two justices of the peace resident as follows; (that is to say,)

In case of wreck, resident at or near the place where such wreck is found:

In cases of services rendered to any ship or boat, or to the persons, cargo, or apparel belonging thereto, resident at or near the place where such ship or boat is lying, or at or near the first port or place in the United Kingdom into which such ship or boat is brought after the occurrence of the accident by reason whereof the claim to salvage arises:

But if the sum claimed exceeds two hundred pounds,

Such dispute may, with the consent of the parties, be referred to the arbitration of such justices as aforesaid, but if they do not consent, shall in England be decided by the High Court of Admiralty of England, in Ireland by the High Court of Admiralty of Ireland, and in Scotland by the Court of Session; subject to this proviso, that if the claimants in such dispute do not recover in such Court of Admiralty or Court of Session a greater sum than two hundred pounds, they shall not, unless the Court certifies that the case is a fit one to be tried in a Superior Court, recover any costs, charges, or expenses incurred by them in the prosecution of their claim:

And every dispute with respect to salvage may be heard and adjudicated upon on the application either of the salvor or of the owner of the property salvaged, or of their respective agents. And see M. S. A., 1862, s. 49.

461. Whenever in pursuance of this Act any dispute as to salvage is referred to the arbitration of two justices, they may either themselves determine the same, with power to call to their assistance any person conversant with maritime affairs as assessor, or they may if a difference of opinion arises between them, or without such difference, if they think fit, appoint some person conversant with maritime affairs as umpire to decide the point in dispute; and such justices or their umpire shall make an award as to the amount of salvage payable, within the following times, that is to say, the said justices within forty-eight hours after such dispute has been referred to them, and the said umpire within forty-eight hours after his appointment, with power nevertheless for such justices or umpire by writing under their or his hands or hand, to extend the time within which they and he are hereby respectively directed to make their or his award.

Manner in  
which  
justices may  
decide  
disputes.

462. There shall be paid to every assessor and umpire, who may be so appointed as aforesaid in respect of his services, such sum not exceeding five pounds as the Board of Trade may from time to time direct; and all the costs of such arbitration, including any such pay-

Costs of arbi-  
tration.

**M. S. Act,  
1854.**

Justices  
may call for  
documents,  
and ad-  
minister  
oaths.

Appeal to  
Courts of  
Admiralty.

Justices to  
transmit  
copy of pro-  
ceedings and  
certificate of  
value to  
Court of  
Appeal.

Payment of  
salvage, to  
whom to be  
made in case  
of dispute as  
to appor-  
tionment.

Appor-  
tion-  
ment of  
salvage.

ments as aforesaid, shall be paid by the parties to the dispute, in such manner and in such shares and proportions as the said justices or as the said umpire may direct by their or his award.

463. The said justices or their umpire may call for the production of any documents in the possession or power of either party, which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

464. If any person is aggrieved by the award made by such justices or such umpire as aforesaid, he may in England appeal to the High Court of Admiralty of England, in Ireland to the High Court of Admiralty of Ireland, and in Scotland to the Court of Session; but no such appeal shall be allowed unless the sum in dispute exceeds fifty pounds, nor unless within ten days after the date of the award the appellant gives notice to the justices to whom the matter was referred of his intention to appeal, nor unless the appellant proceeds to take out a monition, or to take such other proceeding as according to the practice of the Court of Appeal is necessary for the institution of an appeal, within twenty days from the date of the award.

465. Whenever any appeal is made in manner hereinbefore provided, the justices shall transmit to the proper officer of the Court of Appeal a copy on unstamped paper, certified under their hands to be a true copy of the proceedings had before such justices or their umpire (if any) and of the award so made by them or him, accompanied with their or his certificate in writing of the gross value of the article respecting which salvage is claimed; and such copy and certificate shall be admitted in the Court of Appeal as evidence in the cause.

466. Whenever the aggregate amount of salvage payable in respect of salvage services rendered in the United Kingdom has been finally ascertained, either by agreement or by the award of such justices or their umpire, but a dispute arises as to the apportionment thereof among several claimants, then, if the amount does not exceed two hundred pounds, it shall be lawful for the party liable to pay the amount so due to apply to the receiver of the district for liberty to pay the amount so ascertained to him: and he shall, if he thinks fit, receive the same accordingly, and grant a certificate under his hand, stating the fact of such payment and the services in respect of which it is made; and such certificate shall be a full discharge and indemnity to the person or persons to whom it is given, and to their ship, boats, cargo, apparel, and effects, against the claims of all persons whomsoever in respect of the services therein mentioned; but if the amount exceeds two hundred pounds, it shall be apportioned in a manner hereinafter mentioned.

467. Upon the receipt of any such amount as aforesaid the receiver shall with all convenient speed proceed to distribute the same among the several persons entitled thereto, upon such evidence and in such shares and proportions as he thinks fit, with power to retain any moneys that may appear to him to be payable to any absent parties; but any distribution made in pursuance of this section shall be final and conclusive against the rights of all persons claiming to be entitled to any portion of the moneys so distributed.

**468.** Whenever any salvage is due to any person under this Act, the receiver shall act as follows ; (that is to say,) **M. S. Act,  
1854.**

- (1.) If the same is due in respect of services rendered in assisting any ship or boat, or in saving the lives of persons belonging to the same, or the cargo or apparel thereof, Manner of enforcing payment of salvage.

He shall detain such ship or boat and the cargo and apparel belonging thereto until payment is made, or process has been issued by some competent Court for the detention of such ship, boat, cargo, or apparel :

- (2.) If the same is due in respect of the saving of any wreck, and such wreck is not sold as unclaimed in pursuance of the provisions hereinafter contained,

He shall detain such wreck until payment is made, or process has been issued in manner aforesaid :

But it shall be lawful for the receiver, if at any time previously to the issue of such process security is given to his satisfaction for the amount of salvage due, to release from his custody any ship, boat, cargo, apparel, or wreck so detained by him as aforesaid ; and in cases where the claim for salvage exceeds two hundred pounds, it shall be lawful in England for the High Court of Admiralty of England, in Ireland for the High Court of Admiralty of Ireland, and in Scotland for the Court of Session, to determine any question that may arise concerning the amount of the security to be given or the sufficiency of the sureties ; and in all cases where bond or other security is given to the receiver for an amount exceeding two hundred pounds, it shall be lawful for the salvor or for the owner of the property salvaged, or their respective agents, to institute proceedings in such last-mentioned Courts for the purpose of having the questions arising between them adjudicated upon, and the said Courts may enforce payment of the said bond or other security, in the same manner as if bail had been given in the said Courts.

**469.** Whenever any ship, boat, cargo, apparel, or wreck is detained by any receiver for non-payment of any sums so due as aforesaid, and the parties liable to pay the same are aware of such detention, then, in the following cases ; (that is to say,) Power of receiver to sell property salvaged in cases of non-payment.

- (1.) In cases where the amount is not disputed, and payment thereof is not made within twenty days after the same has become due :
- (2.) In cases where the amount is disputed, but no appeal lies from the first tribunal to which the dispute is referred, and payment thereof is not made within twenty days after the decision of such first tribunal :
- (3.) In cases where the amount is disputed, and an appeal lies from the decision of the first tribunal to some other tribunal, and payment thereof is not made within such twenty days as last aforesaid, or such motion as hereinbefore mentioned is not taken out within such twenty days, or such other proceedings as are according to the practice of such other tribunal necessary for the prosecution of an appeal are not instituted within such twenty days :

The receiver may forthwith sell such ship, boat, cargo, apparel, or wreck, or a sufficient part thereof, and out of the proceeds of the sale, after payment of all expenses thereof, defray all sums of money



**M. S. Act, 1854.** due in respect of expenses, fees, and salvage, paying the surplus, if any, to the owners of the property sold, or other the parties entitled to receive the same.

JURISDICTION OF THE HIGH COURT OF ADMIRALTY.

High Court of Admiralty may decide on all salvage cases, whether on sea or land.

**476.** Subject to the provisions of this Act, the High Court of Admiralty shall have jurisdiction to decide upon all claims whatsoever relating to salvage, whether the services in respect of which salvage is claimed were performed upon the high seas, or within the body of any county, or partly in one place and partly in the other, and whether the wreck is found at sea or cast upon the land, or partly in the sea and partly on land.

SALVAGE BY H. M. SHIPS.

No claim for salvage services to be allowed in respect of loss or risk of her Majesty's ships or property. Claims for salvage by her Majesty's officers not to be determined without consent of Admiralty.

**484.** In cases where salvage services are rendered by any ship belonging to her Majesty, or by the commander or crew thereof, no claim shall be made or allowed for any loss, damage, or risk thereby caused to such ship, or to the stores, tackle, or furniture thereof, or for the use of any stores or other articles belonging to her Majesty, supplied in order to effect such services, or for any other expense or loss sustained by her Majesty by reason of such services.

**485.** No claim whatever on account of any salvage services rendered to any ship or cargo, or to any appurtenances of any ship, by the commander, or crew, or part of the crew, of any of her Majesty's ships, shall be finally adjudicated upon, unless the consent of the Admiralty has first been obtained, such consent to be signified by writing under the hand of the Secretary of the Admiralty; and if any person who has originated proceedings in respect of any such claim, fails to prove such consent to the satisfaction of the Court, his suit shall stand dismissed, and he shall pay all the costs of such proceedings; provided that any document purporting to give such consent, and to be signed by the Secretary to the Admiralty, shall be *prima facie* evidence of such consent having been given.

Steps to be taken when salvage services have been rendered by her Majesty's ships abroad.

**486.** Whenever services for which salvage is claimed are rendered to any ship or cargo, or to any part of any ship or cargo, or to any appurtenances of any ship, at any place out of the United Kingdom and the four seas adjoining thereto, by the commander, or crew, or part of the crew, of any of her Majesty's ships, the property alleged to be salvaged shall, if the salvor is justified by the circumstances of the case in detaining it at all, be taken to some port where there is either a consular officer or a Vice-Admiralty Court; and, within twenty-four hours after arriving at such port, the said salvor and the master or other person in charge of the property alleged to be salvaged shall each deliver to the consular officer or Vice Admiralty Judge there a statement verified on oath, specifying, so far as they respectively can, and so far as the particulars required apply to the case,

- (1.) The place, condition, and circumstances in which the said ship, cargo, or property was at the time when the services were rendered for which salvage is claimed:
- (2.) The nature and duration of the services rendered:

And the salvor shall add to this statement,

- (3.) The proportion of the value of the said ship, cargo, and property and of the freight which he claims for salvage, or the

values at which he estimates the said ship, freight, cargo and property respectively, and the several amounts that he claims for salvage in respect of the same :

M. S. Act,  
1854.

(4.) Any other circumstances he thinks relevant to the said claim: And the said master or other person in charge of the said ship, cargo, or property shall add to his statement,

- (5.) A copy of the certificate of registry of the said ship, and of the endorsements thereon, stating any change which (to his knowledge or belief) has occurred in the particulars contained in such certificate; and stating also, to the best of his knowledge and belief, the state of the title to the ship for the time being, and of the incumbrances and certificate of mortgage or sale, if any, affecting the same, and the names and places of business of the owners and incumbancers :
- (6.) The name and place of business or residence of the freighter (if any) of the said ship, and the freight to be paid for the voyage she is then on :
- (7.) A general account of the quantity and nature of the cargo at the time the salvage services were rendered :
- (8.) The name and place of business or residence of the owner of such cargo and of the consignee thereof :
- (9.) The values at which the said master estimates the said ship, cargo, and property, and the freight respectively, or, if he thinks fit, in lieu of such estimated value of the cargo, a copy of the ship's manifest :
- (10.) The amounts which the master thinks should be paid as salvage for the services rendered :
- (11.) An accurate list of the property saved, in cases where the ship is not saved :
- (12.) An account of the proceeds of the sale of the said ship, cargo, or property, in cases where the same or any of them are sold at such port as aforesaid :
- (13.) The number, capacities, and condition of the crew of the said ship at the time the said services were rendered :
- (14.) Any other circumstances he thinks relevant to the matters in question :
- (15.) A statement of his willingness to execute a bond, in the form in the table marked W in the schedule hereto, to such amount as the said consular officer or Vice-Admiralty Judge may fix.

For form of bond, see *post*, p. 323.

487. The said consular officer or Judge, as the case may be, shall within four days after receiving the aforesaid statements, fix the amount to be inserted in the said bond at such sum as he thinks sufficient to answer the demand for the salvage services rendered; but such sum shall not exceed one-half of the value which in his estimation the said ship, freight, and cargo, or any parts thereof in respect of which salvage is claimed, are worth; and the said consular officer or Judge may, if either of the aforesaid statements is not delivered to him within the time hereby required, proceed *ex parte*, but he shall in no case under this Act require the cargo to be unladen; and the said consular officer may in any proceeding under this Act relating to salvage take affidavits and receive affirmations.

Consular officer or Judge to fix amount for which a bond is to be given.

**M. S. Act,  
1854.**

On master  
executing  
bond, the  
right of  
detention to  
cease.

Provision  
for addi-  
tional  
security in  
the case of  
ships owned  
by persons  
resident out  
of her  
Majesty's  
dominions.

Documents  
to be sent to  
England.

Whom the  
bond shall  
bind.

Court in  
which it is  
to be adjudi-  
cated on.

Power of  
High Court  
of Admi-  
ralty to  
enforce  
bonds.

Saving  
clause.

**488.** The said consular officer or Judge shall send notice of the sum which he has so fixed as aforesaid to the said salvor and the said master; and upon such master executing a bond in such form as aforesaid, with the said sum inserted therein, in the presence of the said officer or Judge (who shall attest the same), and delivering the same to the said salvor, the right of the said salvor to detain or retain possession of the said ship, cargo, or property, or any of them in respect of the said salvage claim, shall cease.

**489.** If the ship, cargo, or property in respect of which the claim for salvage is made is not owned by persons domiciled in her Majesty's dominions, the right of the salvor to detain or retain possession thereof shall not cease unless the master procures, in addition to the said bond, such security for the due performance of the conditions thereof as the said officer or Judge considers sufficient for the purpose, and places the same in the possession or custody of the said officer or Judge, or, if the salvor so desires, in the possession or custody of the said officer or Judge jointly with any other person whom the said salvor appoints for the purpose.

**490.** The said consular officer or Judge shall at the earliest opportunity transmit the said statements and documents so sent to him as aforesaid, and a notice of the sum he has so fixed as aforesaid, to the High Court of Admiralty of England, or if the said salvor and the said master or other person in charge as aforesaid agree that the said bond shall be adjudicated upon by any Vice-Admiralty Court, to such Court.

**491.** The said bond shall bind the respective owners of the said ship, freight, and cargo, and their respective heirs, executors, and administrators, for the salvage adjudged to be payable in respect of the said ship, freight, and cargo respectively.

**492.** The said bond shall be adjudicated on and enforced by the High Court of Admiralty in England, or if the said salvor and master at the time of the execution of the said bond agree upon any Vice-Admiralty Court, then by such Vice-Admiralty Court; and any such Vice-Admiralty Court may in every proceeding under this Act have and exercise all powers and authorities whatsoever which the said High Court of Admiralty now has or at any time may have in any proceeding whatsoever before it; and in cases where any security for the due performance of the conditions of the said bond has been placed in the possession or custody of the said consular officer or Vice-Admiralty Judge, or of such officer or Judge jointly with any other person, the person or persons having the custody of such security shall respectively deal with the same in such manner as the Court that adjudicates on the bond directs.

**493.** The said High Court of Admiralty shall have power to enforce any bond given in pursuance of this Act in any Vice-Admiralty Court in any part of her Majesty's dominions; and all Courts in Scotland, Ireland, and the islands of Jersey, Guernsey, Alderney, Sark, and Man exercising Admiralty jurisdiction shall, upon application, aid and assist the High Court of Admiralty in enforcing the said bonds.

**494.** Any such salvor as aforesaid of any ship, cargo, or property who elects not to proceed under this Act shall have no power to detain the said ship, cargo, or property, but may proceed otherwise

for the enforcement of his salvage claim as if this Act had not been passed; and nothing in this Act contained shall abridge or affect the rights of salvors, except in the cases by it provided for.

**M. S. Act,  
1854.**

SALVAGE (GENERAL).

497. Whenever services for which salvage is claimed are rendered either by the commander or crew, or part of the crew, of any of her Majesty's ships, or of any other ship, and the salvor voluntarily agrees to abandon his lien upon the ship, cargo, and property alleged to be saved, upon the master or other person in charge thereof entering into a written agreement attested by two witnesses to abide the decision of the said High Court of Admiralty, or of any Vice-Admiralty Court, and thereby giving security in that behalf to such amount as may be agreed on by the parties to the said agreement, such agreement shall bind the said ship and the said cargo and the freight payable therefor respectively, and the respective owners of the said ship, freight, and cargo for the time being, and their respective heirs, executors, and administrators, for the salvage which may be adjudged to be payable in respect of the said ship, cargo, and freight respectively to the extent of the security so given as aforesaid, and may be adjudicated upon and enforced in the same manner as the bonds provided for by the eighth part of this Act, in the case of detention for salvage services rendered by her Majesty's ships; and upon such agreement being made the salvor and the master, or other person in charge as aforesaid, shall respectively make such statements as are hereinbefore required to be made by them in case of a bond being given, except that such statements need not be made upon oath; and the salvor shall, as soon as practicable, transmit the said agreement and the said statements to the Court in which the said agreement is to be adjudicated upon.

Voluntary agreement may be made which shall have the same effect as the bond above mentioned.

498. Whenever the aggregate amount of salvage payable in respect of salvage services rendered in the United Kingdom has been finally ascertained, and exceeds two hundred pounds, and whenever the aggregate amount of salvage payable in respect of salvage services rendered elsewhere has been finally ascertained, whatever such amount may be, then if any delay or dispute arises as to the apportionment thereof, any Court having Admiralty jurisdiction may cause the same to be apportioned amongst the persons entitled thereto in such manner as it thinks just; and may for that purpose, if it thinks fit, appoint any person to carry such apportionment into effect, and may compel any person in whose hands or under whose control such amount may be to distribute the same, or to bring the same into Court, to be there dealt with as the Court may direct, and may for the purposes aforesaid issue such monitions or other processes as it thinks fit.

Powers for Courts having Admiralty jurisdiction to apportion salvage.

TABLE W. (See section 486.)

SALVAGE BOND.

[N.B.—Any of the particulars not known or not required by reason of the claim being only against the cargo, &c., may be omitted.]

WHEREAS certain salvage services are alleged to have been rendered by the ship [insert names of ship and of commander], commander, to the

**M. S. Act,** merchant ship [*insert names of ship and master,*] master, belonging to  
**1854.** [*name and place of business or residence of owner of ship,*] freighted by  
 [the same of the freighter], and to the cargo therein, consisting of [*state very*  
*shortly the descriptions and quantities of the goods and the names and addresses*  
*of their owners and consignees*]:

And whereas the said ship and cargo have been brought into the port of  
 [*insert name and situation of port,*] and a statement of the salvage claim  
 has been sent to [*insert the name of the consular officer or Vice-Admiralty*  
*Judge, and of the office he fills,*] and he has fixed the amount to be inserted in  
 this bond at the sum of [*state the sum*]:

Now I, the said [*master's name,*] do hereby, in pursuance of the Merchant  
 Shipping Act, 1854, bind the several owners for the time being of the said  
 ship and of the cargo therein, and of the freight payable in respect of such  
 cargo, and their respective heirs, executors, and administrators, to pay  
 among them such sum, not exceeding the said sum of [*state the sum fixed,*]  
 in such proportions and to such persons as [*if the parties agree on any other*  
*Court, substitute the name of it here*] the High Court of Admiralty in Eng-  
 land shall adjudge to be payable as salvage for the services so alleged to  
 have been rendered as aforesaid.

In witness whereof I have hereunto set my hand and seal, this [*insert*  
*the date*] day of

Signed, sealed and delivered by the said [*master's name,*]

(L.s.)

In the presence of [*name of consular officer or Vice-Admiralty Judge, and*  
*of the office he fills,*]

## THE MERCHANT SHIPPING ACTS AMENDMENT ACT, 1862.

25 & 26 VICT. c. 63.

Stipulations  
 concerning  
 salvage.

18. It is hereby declared, that the 182nd section of the principal  
 Act does not apply to the case of any stipulation made by the sea-  
 men belonging to any ship, which according to the terms of the  
 agreement is to be employed on salvage service, with respect to the  
 remuneration to be paid to them for salvage services to be rendered  
 by such ship to any other ship or ships.

### WRECK AND SALVAGE (PART VIII. OF MERCHANT SHIPPING ACT, 1854.)

Extension  
 and amend-  
 ment of  
 summary  
 jurisdiction  
 in small  
 salvage  
 cases.

49. The provisions contained in the eighth part of the principal  
 Act for giving summary jurisdiction to two justices in salvage cases,  
 and for preventing unnecessary appeals and litigation in such cases,  
 shall be amended as follows: (that is to say,)

- (1.) Such provisions shall extend to all cases in which the value  
 of the property saved does not exceed one thousand pounds,  
 as well as to the cases provided for by the principal Act:
- (2.) Such provisions shall be held to apply whether the salvage  
 service has been rendered within the limits of the United  
 Kingdom or not:
- (3.) It shall be lawful for one of her Majesty's principal secre-  
 taries of state, or in Ireland for the Lord Lieutenant or  
 other chief governor or governors, to appoint out of the  
 justices for any borough or county a rota of justices by whom  
 jurisdiction in salvage cases shall be exercised:

- (4.) When no such rota is appointed, it shall be lawful for the salvors, by writing addressed to the justice's clerk, to name one justice, and for the owner of the property saved in like manner to name the other: **M. S. Act, 1862.**
- (5.) If either party fails to name a justice within a reasonable time, the case may be tried by two or more justices at petty sessions:
- (6.) It shall be competent for any stipendiary magistrate, and also in England for any County Court Judge, in Scotland for the sheriff or sheriff-substitute of any county, and in Ireland for the recorder of any borough in which there is a recorder, or for the chairman of quarter sessions in any county, to exercise the same jurisdiction in salvage cases as is given to two justices:
- (7.) It shall be lawful for one of her Majesty's principal secretaries of state to determine a scale of costs to be awarded in salvage cases by any such justices or Court as aforesaid:
- (8.) All the provisions of the principal Act relating to summary proceedings in salvage cases, and to the prevention of unnecessary appeals in such cases, shall, except so far as the same are altered by this Act, extend and apply to all such proceedings, whether under the principal Act or this Act, or both of such Acts.

50. Whenever any salvage question arises, the receiver of wreck for the district may, upon application from either of the parties, appoint a valuer to value the property in respect of which the salvage claim is made, and shall, when the valuation has been returned to him, give a copy of the valuation to both parties; and any copy of such valuation, purporting to be signed by the valuer, and to be attested by the receiver, shall be received in evidence in any subsequent proceeding; and there shall be paid in respect of such valuation, by the party applying for the same, such fee as the Board of Trade may direct.

Receiver may appoint a valuer in salvage cases.

59. Whenever it is made to appear to her Majesty that the government of any foreign country is willing that salvage shall be awarded by British Courts for services rendered in saving life from any ship belonging to such country when such ship is beyond the limits of British jurisdiction, her Majesty may by order in Council direct that the provisions of the principal Act and of this Act, with respect to salvage for service rendered in saving life from British ships, shall in all British Courts be held to apply to services rendered in saving life from the ships of such foreign country, whether such services are rendered within British jurisdiction or not.

Provision concerning salvage of life may, with the consent of any foreign country, be applied to its ships on the high seas.

THE MERCHANT SHIPPING ACT, 1873.

36 & 37 VICT. c. 85.

18. The signals specified in the first schedule to this Act shall be deemed to be signals of distress.

Signals of distress.

Any master of a vessel who uses or displays, or causes or permits any person under his authority to use or display, any of the said

**M. S. Act, 1873.** signals, except in the case of a vessel being in distress, shall be liable to pay compensation for any labour undertaken, risk incurred, or loss sustained, in consequence of such signal having been supposed to be a signal of distress, and such compensation may without prejudice to any other remedy be recovered in the same manner in which salvage is recoverable.

(2) *Damage and Collisions.*

THE MERCHANT SHIPPING ACT, 1854.

17 & 18 VICT. c. 104.

**Collisions to be entered in official log.** **326.** In every case of collision, in which it is practicable so to do, the master shall immediately after the occurrence cause a statement thereof and of the circumstances under which the same occurred, to be entered in the official log-book (if any), such entry to be signed by the master, and also by the mate or one of the crew, and in default shall incur a penalty not exceeding twenty pounds.

**Saving of owners' and masters' rights.** **388.** No owner or master of any ship shall be answerable to any person whatever for any loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of such ship within any district where the employment of such pilot is compulsory by law.

LIMITATION OF LIABILITY.

**Owner not liable in respect of certain articles.** **503.** No owner of any sea-going ship or share therein shall be liable to make good any loss or damage that may happen without his actual fault or privity of or to any of the following things (that is to say) :

- (1.) Of or to any goods, merchandise or other things whatsoever taken in or put on board any such ship by reason of any fire happening on board such ship :
- (2.) Of or to any gold, silver, diamonds, watches, jewels, or precious stones taken in or put on board any such ship, by reason of any robbery, embezzlement, making away with or secreting thereof, unless the owner or shipper thereof has, at the time of shipping the same, inserted in his bills of lading or otherwise declared in writing to the master or owner of such ship the true nature and value of such articles.

To any extent whatever.

And see 25 & 26 Vict. c. 63, s. 54, for further provisions as to limitation of liability.

**Provision for separate losses.** **506.** The owner of every sea-going ship or share therein shall be liable in respect of every such loss of life, personal injury, loss of or damage to goods as aforesaid arising on distinct occasions to the same extent as if no other loss, injury, or damage had arisen.

**Proceedings in case of several** **514.** In cases where any liability has been or is alleged to have been incurred by any owner in respect of loss of life, personal in-

jury, or loss of or damage to ships, boats, or goods, and several claims are made or apprehended in respect of such liability, then, subject to the right hereinbefore given to the Board of Trade of recovering damages in the United Kingdom in respect of loss of life or personal injury, it shall be lawful in England or Ireland for the High Court of Chancery, and in Scotland for the Court of Session, and in any British possession for any competent Court to entertain proceedings at the suit of any owner for the purpose of determining the amount of such liability subject as aforesaid, and for the distribution of such amount rateably amongst the several claimants, with power for any such Court to stop all actions and suits pending in any other Court in relation to the same subject-matter; and any proceeding entertained by such Court of Chancery or Court of Session, or other competent Court, may be conducted in such manner and subject to such regulations as to making any persons interested parties to the same, and as to the exclusion of any claimants who do not come in within a certain time, and as to requiring security from the owner, and as to payment of costs, as the Court thinks just.

M. S. Act,  
1854.

claims being made on owner of ship.

515. All sums of money paid for or on account of any loss or damage in respect whereof the liability of the owners of any ship is limited by the ninth part of this Act, and all costs incurred in relation thereto, may be brought into account among part-owners of the same ship in the same manner as money disbursed for the use thereof.

Money paid for damage, how to be accounted for between part owners.

516. Nothing in the ninth part of this Act contained shall be construed—

Saving clause.

To lessen or take away any liability to which any master or seaman, being also owner or part-owner of the ship to which he belongs, is subject in his capacity of master or seaman; or

To extend to any British ship not being a recognised British ship within the meaning of this Act.

527. Whenever any injury has in any part of the world been caused to any property belonging to her Majesty, or to any of her Majesty's subjects, by any foreign ship, if at any time thereafter such ship is found in any port or river of the United Kingdom, or within three miles of the coast thereof, it shall be lawful for the Judge of any Court of Record in the United Kingdom, or for the Judge of the High Court of Admiralty, or in Scotland the Court of Session, or the sheriff of the county within whose jurisdiction such ship may be, upon its being shown to him by any person applying summarily that such injury was probably caused by the misconduct or want of skill of the master or mariners of such ship, to issue an order directed to any officer of customs or other officer named by such Judge, requiring him to detain such ship until such time as the owner, master, or consignee thereof has made satisfaction in respect of such injury, or has given security, to be approved by the Judge, to abide the event of any action, suit, or other legal proceeding that may be instituted in respect of such injury, and to pay all costs and damages that may be awarded thereon; and any officer of customs or other officer to whom such order is directed shall detain such ship accordingly.

Power of Judge of Court of Record or Admiralty to arrest foreign ship that has occasioned damage.

528. In any case where it appears that before any application can be made under the foregoing section such foreign ship will have

Power in certain cases to



**M. S. Act,  
1854.**

detain  
ship before  
application  
made to  
judge.

Who to be  
defendant to  
suit in such  
cases.

departed beyond the limits therein mentioned, it shall be lawful for any commissioned officer on full pay in the military or naval service of her Majesty, or any British officer of customs, or any British consular officer, to detain such ship until such time as will allow such application to be made and the result thereof to be communicated to him; and no such officer shall be liable for any costs or damages in respect of such detention unless the same is proved to have been made without reasonable grounds.

529. In any action, suit, or other proceeding in relation to such injury, the person so giving security as aforesaid shall be made defendant or defender, and shall be stated to be the owner of the ship that has occasioned such damage; and the production of the order of the Judge made in relation to such security shall be conclusive evidence of the liability of such defendant or defender to such action, suit, or other proceeding.

## THE MERCHANT SHIPPING ACT, 1862.

25 & 26 VICT. c. 63.

Enactment  
of regula-  
tions con-  
cerning  
lights, fog  
signals, and  
sailing  
rules in  
schedule,  
Table C.

25. On and after the 1st day of June, one thousand eight hundred and sixty-three, or such later day as may be fixed for the purpose by order in Council, the regulations contained in the table marked C in the schedule hereto shall come into operation and be of the same force as if they were enacted in the body of this Act; but her Majesty may from time to time, on the joint recommendation of the Admiralty and the Board of Trade, by order in Council, annul or modify any of the said regulations, or make new regulations in addition thereto or in substitution therefor; and any alterations in or additions to such regulations made in manner aforesaid shall be of the same force as the regulations in the said schedule.

Regulations  
to be pub-  
lished.

26. The Board of Trade shall cause the said regulations, and any alterations therein or additions thereto hereafter to be made, to be printed, and shall furnish a copy thereof to any owner or master of a ship who applies for the same; and production of the "Gazette" in which any order in Council containing such regulations or any alterations therein or additions thereto is published, or of a copy of such regulations, alterations, or additions, signed or purporting to be signed by one of the secretaries or assistant secretaries of the Board of Trade, or sealed or purporting to be sealed with the seal of the Board of Trade, shall be sufficient evidence of the due making and purport of such regulations, alterations, or additions.

Owners and  
masters  
bound to  
obey them.

27. All owners and masters of ships shall be bound to take notice of all such regulations as aforesaid, and shall, so long as the same continue in force, be bound to obey them, and to carry and exhibit no other lights, and to use no other fog signals than such as are required by the said regulations; and in case of wilful default, the master or the owner of the ship, if it appear that he was in such fault, shall, for each occasion upon which such regulations are infringed, be deemed to be guilty of a misdemeanour.

28. In case any damage to person or property arises from the non-observance by any ship of any regulation made by or in pursuance of this Act, such damage shall be deemed to have been occasioned by the wilful default of the person in charge of the deck of such ship at the time, unless it is shown to the satisfaction of the Court that the circumstances of the case made a departure from the regulation necessary.

M. S. Act,  
1862.

Breaches of regulations to imply wilful default of person in charge.  
Rules for harbours under Local Acts to continue in force.

31. Any rules concerning the lights or signals to be carried by vessels navigating the waters of any harbour, river, or other inland navigation, or concerning the steps for avoiding collision to be taken by such vessels, which have been or are hereafter made by or under the authority of any Local Act, shall continue and be of full force and effect notwithstanding anything in this Act or in the schedule thereto contained.

LIABILITY OF SHIPOWNERS (PART IX. OF MERCHANT SHIPPING ACT, 1854).

54. The owners of any ship, whether British or foreign, shall not, in cases where all or any of the following events occur without their actual fault or privity; (that is to say)

Shipowners' liability limited.

- (1.) Where any loss of life or personal injury is caused to any person being carried in such ship;
- (2.) Where any damage or loss is caused to any goods, merchandise, or other things whatsoever on board any such ship;
- (3.) Where any loss of life or personal injury is by reason of the improper navigation of such ship as aforesaid caused to any person carried in any other ship or boat;
- (4.) Where any loss or damage is by reason of the improper navigation of such ship as aforesaid caused to any other ship or boat, or to any goods, merchandise, or other things whatsoever on board any other ship or boat;

be answerable in damages in respect of loss of life or personal injury, either alone or together with loss or damage to ships, boats, goods, merchandise, or other things, to an aggregate amount exceeding fifteen pounds for each ton of their ship's tonnage; nor in respect of loss or damage to ships, goods, merchandise, or other things, whether there be in addition loss of life or personal injury or not, to an aggregate amount exceeding eight pounds for each ton of the ship's tonnage; such tonnage to be the registered tonnage in the case of sailing ships, and in the case of steam ships the gross tonnage without deduction on account of engine room:

In the case of any foreign ship which has been or can be measured according to British law, the tonnage as ascertained by such measurement shall, for the purposes of this section, be deemed to be the tonnage of such ship:

In the case of any foreign ship which has not been and cannot be measured under British law, the surveyor-general of tonnage in the United Kingdom, and the chief measuring officer in any British possession abroad, shall, on receiving from or by direction of the Court hearing the case such evidence concerning the dimensions of the ship as it may be found practicable to furnish, give a certificate under his

**M. S. Act, 1862.** hand, stating what would in his opinion have been the tonnage of such ship if she had been duly measured according to British law, and the tonnage so stated in such certificate shall, for the purposes of this section, be deemed to be the tonnage of such ship.

Proof of passengers on board lost ship.

56. In any proceeding under the 506th section of the principal Act or any Act amending the same against the owner of any ship or share therein in respect of loss of life, the master's list or the duplicate list of passengers delivered to the proper officer of customs under the 16th section of "The Passengers Act, 1854," shall, in the absence of proof to the contrary, be sufficient proof that the persons in respect of whose death any such prosecution or proceeding is instituted were passengers on board such ship at the time of their deaths.

ARRANGEMENTS CONCERNING LIGHTS, SAILING RULES, SALVAGE AND MEASUREMENT OF TONNAGE IN THE CASE OF FOREIGN SHIPS.

Foreign ships in British jurisdiction to be subject to regulations in Table (C) in schedule.

57. Whenever foreign ships are within British jurisdiction, the regulations for preventing collision contained in Table (C) in the schedule to this Act, or such other regulations for preventing collision as are for the time being in force under this Act, and all provisions of this Act relating to such regulations, or otherwise relating to collisions, shall apply to such foreign ships; and in any cases arising in any British Court of Justice concerning matters happening within British jurisdiction, foreign ships shall, so far as regards such regulations and provisions, be treated as if they were British ships.

Regulations, when adopted by a foreign country, may be applied to its ships on the high seas.

58. Whenever it is made to appear to her Majesty that the government of any foreign country is willing that the regulations for preventing collision contained in Table (C) in the schedule to this Act, or such other regulations for preventing collision as are for the time being in force under this Act, or any of the said regulations, or any provisions of this Act relating to collisions, should apply to the ships of this country when beyond the limits of British jurisdiction, her Majesty may, by order in Council, direct that such regulations, and all provisions of this Act which relate to such regulations, and all such other provisions as aforesaid, shall apply to the ships of the said foreign country, whether within British jurisdiction or not.

MERCHANT SHIPPING ACT, 1873.

36 & 37 VICT. c. 85.

After collision each vessel to stay by the other.

16. In every case of collision between two vessels, it shall be the duty of the master or person in charge of each vessel, if and so far as he can do so without danger to his own vessel, crew, and passengers (if any), to stay by the other vessel until he has ascertained that she has no need of further assistance, and to render to the other vessel, her master, crew, and passengers (if any) such assistance as may be practicable, and as may be necessary in order to save them from any damage caused by the collision; and also to give to the master or person in charge of the other vessel the name of his

own vessel and of her port of registry, or of the port or place to which she belongs, and also the names of the ports or places from which and to which she is bound. M. S. Act,  
1873.

If he fails so to do, and no reasonable cause for such failure is shown, the collision shall, in the absence of proof to the contrary, be deemed to be caused by his wrongful act, neglect or default.

17. If, in any case of collision, it is proved to the Court before which the case is tried that any of the regulations for preventing collision contained in or made under the Merchant Shipping Acts, 1854 to 1873, have been infringed, the ship by which such regulation has been infringed shall be deemed to be in fault, unless it is shown to the satisfaction of the Court that the circumstances of the case made departure from the regulation necessary. Ship which  
infringes  
regulations  
to be  
deemed in  
fault.

(3) *Wages.*

THE MERCHANT SHIPPING ACT, 1854.

17 & 18 VICT. c. 104.

PART III.

MASTERS AND SEAMEN.

149. The master of every ship, except ships of less than eighty tons registered tonnage exclusively employed in trading between different ports on the coasts of the United Kingdom, shall enter into an agreement with every seaman whom he carries to sea from any port in the United Kingdom as one of his crew in the manner hereinafter mentioned; and every such agreement shall be in a form sanctioned by the Board of Trade, and shall be dated at the time of the first signature thereof, and shall be signed by the master before any seaman signs the same, and shall contain the following particulars as terms thereof; (that is to say,) Agreements  
to be made  
with sea-  
men, con-  
taining  
certain par-  
ticulars.

- (1.) The nature, and, as far as practicable, the duration of the intended voyage or engagement :
- (2.) The number and description of the crew, specifying how many are engaged as sailors :
- (3.) The time at which each seaman is to be on board or to begin work :
- (4.) The capacity in which each seaman is to serve :
- (5.) The amount of wages which each seaman is to receive :
- (6.) A scale of the provisions which are to be furnished to each seaman :
- (7.) Any regulations as to conduct on board, and as to fines, short allowance of provisions, or other lawful punishments for misconduct, which have been sanctioned by the Board of Trade as regulations proper to be adopted, and which the parties agree to adopt.

**M. S. Act,  
1854.**

Proviso as  
to forms for  
colonial  
ships.

For foreign-  
going ships,  
such agree-  
ments,  
when made  
in the  
United  
Kingdom,  
except in  
special  
cases, to be  
made before  
and attested  
by a  
shipping  
master.  
To be in  
duplicate.

Provision  
for sub-  
stitutes.

Foreign-  
going ships  
making  
short  
voyages may  
have run-  
ning agree-  
ments.

And every such agreement shall be so framed as to admit of stipulations, to be adopted at the will of the master and seamen in each case, as to advance and allotment of wages, and may contain any other stipulations, which are not contrary to law; provided that if the master of any ship belonging to any British possession has an agreement with his crew made in due form according to the law of the possession to which such ship belongs or in which her crew were engaged, and engages single seamen in the United Kingdom, such seamen may sign the agreement so made, and it shall not be necessary for them to sign an agreement in the form sanctioned by the Board of Trade.

150. In the case of all foreign-going ships, in whatever part of her Majesty's dominions the same are registered, the following rules shall be observed with respect to agreements; (that is to say),

- (1.) Every agreement made in the United Kingdom (except in such cases of agreements with substitutes as are hereinafter specially provided for) shall be signed by each seaman in the presence of a shipping master:
- (2.) Such shipping master shall cause the agreement to be read over and explained to each seaman, or otherwise ascertain that each seaman understands the same before he signs it, and shall attest each signature:
- (3.) When the crew is first engaged the agreement shall be signed in duplicate, and one part shall be retained by the shipping master, and the other part shall contain a special place or form for the descriptions and signatures of substitutes or persons engaged subsequently to the first departure of the ship, and shall be delivered to the master:
- (4.) In the case of substitutes engaged in the place of seamen who have duly signed the agreement, and whose services are lost within twenty-four hours of the ship's putting to sea, by death, desertion, or other unforeseen cause, the engagement shall, when practicable, be made before some shipping master duly appointed in the manner hereinbefore specified; and whenever such last-mentioned engagement cannot be so made, the master shall, before the ship puts to sea, if practicable, and if not, as soon afterwards as possible, cause the agreement to be read over and explained to the seaman; and the seaman shall thereupon sign the same in the presence of a witness, who shall attest their signatures.

151. In the case of foreign-going ships making voyages averaging less than six months in duration, running agreements with the crew may be made to extend over two or more voyages, so that no such agreement shall extend beyond the next following thirtieth day of June or thirty-first day of December, or the first arrival of the ship at her port of destination in the United Kingdom after such date, or the discharge of cargo consequent upon such arrival; and every person entering into such agreement, whether engaged upon the first commencement thereof or otherwise, shall enter into and sign the same in the manner hereby required for other foreign-going ships; and every person engaged thereunder, if discharged in the United Kingdom, shall be discharged in the manner hereby

required for the discharge of seamen belonging to other foreign-going ships. **M. S. Act, 1854.**

152. The master of every foreign-going ship for which such a running agreement as aforesaid is made shall, upon every return to any port in the United Kingdom before the final termination of the agreement, discharge or engage before the shipping master at such port any seamen whom he is required by law so to discharge or engage, and shall upon every such return endorse on the agreement a statement (as the case may be) either that no such discharges or engagements have been made or are intended to be made before the ship again leaves port, or that all such discharges or engagements have been duly made as hereinbefore required, and shall deliver the agreement so endorsed to the shipping master; and any master who wilfully makes a false statement in such endorsement shall incur a penalty not exceeding twenty pounds; and the shipping master shall also sign an endorsement on the agreement to the effect that the provisions of this Act relating to such agreement have been complied with, and shall re-deliver the agreement so endorsed to the master.

Engagement and discharge of seamen in the meantime.

153. In cases in which such running agreements are made, the duplicate agreement retained by the shipping master upon the first engagement of the crew shall either be transmitted to the registrar general of seamen immediately, or be kept by the shipping master until the expiration of the agreement, as the Board of Trade directs.

Duplicates of running agreements, how to be dealt with

154. For the purpose of determining the fees to be paid upon the engagement and discharge of seamen belonging to foreign-going ships which have running agreements as aforesaid, the crew shall be considered to be engaged when the agreement is first signed, and to be discharged when the agreement finally terminates, and all intermediate engagements and discharges shall be considered to be engagements and discharges of single seamen.

Fees to be paid on such running agreements.

155. In the case of home-trade ships, crews or single seamen may, if the master thinks fit, be engaged before a shipping master in the manner hereinbefore directed with respect to foreign-going ships; and in every case in which the engagement is not so made, the master shall, before the ship puts to sea, if practicable, and if not, as soon afterwards as possible, cause the agreement to be read over and explained to each seaman, and the seaman shall thereupon sign the same in the presence of a witness, who shall attest his signature.

In home-trade ships agreement to be entered into before a shipping master or other witness.

156. In cases where several home-trade ships belong to the same owner, the agreement with the seamen may, notwithstanding anything herein contained, be made by the owner instead of by the master, and the seamen may be engaged to serve in any two or more of such ships, provided that the names of the ships and the nature of the service are specified in the agreement; but with the foregoing exception all provisions herein contained which relate to ordinary agreements for home-trade ships shall be applicable to agreements made in pursuance of this section.

Special agreements for home-trade ships belonging to same owners.

153. Every erasure, interlineation, or alteration in any such agreement with seamen as is required by the third part of this Act (except additions so made as hereinbefore directed for shipping substitutes or persons engaged subsequently to the first departure of the ship) shall be wholly inoperative, unless proved to have been

Alterations to be void unless attested to have been made with the consent

**M. S. Act,  
1854.**

of all  
parties.

Seamen not  
to be bound  
to produce  
agreement.  
Seamen dis-  
charged  
before  
voyage to  
have com-  
pensation.

made with the consent of all the persons interested in such erasure, interlineation, or alteration by the written attestation (if made in her Majesty's dominions, of some shipping master, justice, officer of customs, or other public functionary, or if made out of her Majesty's dominions) of a British consular officer, or where there is no such officer, of two respectable British merchants.

**165.** Any seaman may bring forth evidence to prove the contents of any agreement or otherwise to support his case, without producing or giving notice to produce the agreement or any copy thereof.

**167.** Any seaman who has signed an agreement, and is afterwards discharged before the commencement of the voyage, or before one month's wages are earned, without fault on his part justifying such discharge and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may have earned, due compensation for the damage thereby caused to him, not exceeding one month's wages, and may, on adducing such evidence as the Court hearing the case deems satisfactory of his having been so improperly discharged as aforesaid, recover such compensation as if it were wages duly earned.

**ALLOTMENT OF WAGES.**

Regulations  
as to  
allotment  
notes.

Allotment  
notes may  
be sued on  
summarily  
by certain  
persons and  
under  
certain con-  
ditions.

**168.** All stipulations for the allotment of any part of the wages of a seaman during his absence which are made at the commencement of the voyage shall be inserted in the agreement, and shall state the amounts and times of the payments to be made; and all allotment notes shall be in forms sanctioned by the Board of Trade.

**169.** The wife, or the father or mother, or the grandfather or grandmother, or any child or grandchild, or any brother or sister of any seaman in whose favour an allotment note of part of the wages of such seaman is made, may, unless the seaman is shown in manner hereinafter mentioned to have forfeited or ceased to be entitled to the wages out of which the allotment is to be paid, and subject as to the wife, to the provision hereinafter contained, sue for and recover the sums allotted by the note when and as the same are made payable, with costs, from the owner or any agent who has authorized the drawing of the note, either in the County Court or in the summary manner in which seamen are by this Act enabled to sue for and recover wages not exceeding fifty pounds; and in any such proceeding it shall be sufficient for the claimant to prove that he or she is the person mentioned in the note, and that the note was given by the owner or by the master or some other authorized agent; and the seaman shall be presumed to be duly earning his wages, unless the contrary is shown to the satisfaction of the Court, either by the official statement of the change in the crew caused by his absence made and signed by the master, as by this Act is required, or by a duly certified copy of some entry in the official log-book to the effect that he has left the ship, or by a credible letter from the master of the ship to the same effect, or by such other evidence, of whatever description, as the Court in its absolute discretion considers sufficient to show satisfactorily that the seaman has ceased to be entitled to the wages out of which the allotment is to be paid: provided that the wife of any seaman who deserts her children, or so misconducts her self as to be undeserving of support from her husband, shall thereupon

forfeit all right to further payments of any allotment of his wages which has been made in her favour. M. S. Act,  
1854.

## DISCHARGE AND PAYMENT OF WAGES.

170. In the case of all British foreign-going ships, in whatever part of her Majesty's dominions the same are registered, all seamen discharged in the United Kingdom shall be discharged and receive their wages in the presence of a shipping master duly appointed under this Act, except in cases where some competent Court otherwise directs : and any master or owner of any such ship who discharges any seaman belonging thereto, or, except as aforesaid, pays his wages within the United Kingdom in any other manner, shall incur a penalty not exceeding ten pounds ; and in the case of home-trade ships seamen may, if the owner or master so desires, be discharged and receive their wages in like manner.

Discharge from foreign-going ships to be made before shipping master.

171. Every master shall, not less than twenty-four hours before paying off or discharging any seaman, deliver to him, or, if he is to be discharged before a shipping master, to such shipping master, a full and true account in a form sanctioned by the Board of Trade of his wages and of all deductions to be made therefrom on any account whatever, and in default shall for each offence incur a penalty not exceeding five pounds ; and no deduction from the wages of any seaman (except in respect of any matter happening after such delivery) shall be allowed unless it is included in the account so delivered ; and the master shall during the voyage enter the various matters in respect of which such deductions are made, with the amounts of the respective deductions, as they occur, in a book to be kept for that purpose, and shall, if required, produce such book at the time of the payment of wages, and also upon the hearing before any competent authority of any complaint or question relating to such payments.

Master to deliver account of wages.

173. Every shipping master shall hear and decide any question whatever between a master or owner and any of his crew which both parties agree in writing to submit to him ; and every award so made by him shall be binding on both parties, and shall in any legal proceeding which may be taken in the matter before any Court of justice be deemed to be conclusive as to the rights of the parties ; and no such submission or award shall require a stamp ; and any document purporting to be such submission or award shall be *prima facie* evidence thereof.

Shipping master may decide questions which parties refer to him.

175. The following rules shall be observed with respect to the settlement of wages ; (that is to say),

Settlement of wages.

- (1.) Upon the completion before a shipping master of any discharge and settlement, the master or owner and each seaman shall respectively in the presence of the shipping master sign in a form sanctioned by the Board of Trade a mutual release of all claims in respect of the past voyage or engagement, and the shipping master shall also sign and attest it, and shall retain and transmit it as herein directed :
- (2.) Such release so signed and attested shall operate as a mutual discharge and settlement of all demands between the parties thereto in respect of the past voyage or engagement :
- (3.) A copy of such release certified under the hand of such ship-

Release to be signed before and attested by the shipping master.

To be discharge.

And to be evidence.



**M. S. Act,  
1854.**

No other receipt to be a discharge.

Voucher to be given to master, and to be evidence.

Right to wages and provisions, when to begin.

Seamen not to give up certain rights.

Wages not to be dependent on the earning of freight.

In case of death, such wages to be paid as after-mentioned.

Rights to wages in case of termination of service by wreck or illness.

Wages not to accrue during refusal to work or imprisonment.

ping master to be a true copy shall be given by him to any party thereto requiring the same ; and such copy shall be receivable in evidence upon any future question touching such claims as aforesaid, and shall have all the effect of the original of which it purports to be a copy :

- (4.) In cases in which discharge and settlement before a shipping master are hereby required, no payment, receipt, settlement, or discharge otherwise made shall operate or be admitted as evidence of the release or satisfaction of any claim.
- (5.) Upon any payment being made by a master before a shipping master, the shipping master shall, if required, sign and give to such master a statement of the whole amount so paid ; and such statement shall as between the master and his employer be received as evidence that he has made the payments therein mentioned.

## LEGAL RIGHTS TO WAGES.

181. A seaman's right to wages and provisions shall be taken to commence either at the time at which he commences work or at the time specified in the agreement for his commencement of work or presence on board, whichever first happens.

182. No seaman shall by any agreement forfeit his lien upon the ship, or be deprived of any remedy for the recovery of his wages to which he would otherwise have been entitled ; and every stipulation in any agreement inconsistent with any provision of this Act, and every stipulation by which any seaman consents to abandon his right to wages in the case of the loss of the ship, or to abandon any right which he may have or obtain in the nature of salvage, shall be wholly inoperative. See sec. 18 of 25 & 26 Vict. c. 63.

183. No right to wages shall be dependent on the earning of freight ; and every seaman and apprentice who would be entitled to demand and recover any wages if the ship in which he has served had earned freight, shall, subject to all other rules of law and conditions applicable to the case, be entitled to claim and recover the same, notwithstanding that freight has not been earned ; but in all cases of wreck or loss of the ship, proof that he has not exerted himself to the utmost to save the ship, cargo, and stores shall bar his claim.

184. If any seaman or apprentice to whom wages are due under the last preceding enactment dies before the same are paid, they shall be paid and applied in the manner hereinafter specified with regard to the wages of seamen who die during a voyage.

185. In cases where the service of any seaman terminates before the period contemplated in the agreement by reason of the wreck or loss of the ship, and also in cases where such service terminates before such period as aforesaid by reason of his being left on shore at any place abroad under a certificate of his unfitness or inability to proceed on the voyage granted as hereinafter mentioned, such seaman shall be entitled to wages for the time of service prior to such termination as aforesaid, but not for any further period.

186. No seaman or apprentice shall be entitled to wages for any period during which he unlawfully refuses or neglects to work when required, whether before or after the time fixed by the agreement for his beginning work, nor, unless the Court hearing the case otherwise

directs, for any period during which he is lawfully imprisoned for any offence committed by him. M. S. Act,  
1854.

187. The master or owner of every ship shall pay to every seaman his wages within the respective periods following, (that is to say), in the case of a home-trade ship, within two days after the termination of the agreement or at the time when such seaman is discharged, whichever first happens; and in the case of all other ships (except ships employed in the southern whale fishery or on other voyages for which seamen by the terms of their agreement are wholly compensated by shares in the profits of the adventure) within three days after the cargo has been delivered, or within five days after the seaman's discharge, whichever first happens; and in all cases the seaman shall at the time of his discharge be entitled to be paid on account a sum equal to one-fourth part of the balance due to him; and every master or owner who neglects or refuses to make payment in manner aforesaid, without sufficient cause, shall pay to the seaman a sum not exceeding the amount of two days' pay for each of the days, not exceeding ten days, during which payment is delayed beyond the respective periods aforesaid, and such sum shall be recoverable as wages.

Period within which wages are to be paid.

- MODE OF RECOVERING WAGES.

188. Any seaman or apprentice, or any person duly authorized on his behalf, may sue in a summary manner before any two justices of the peace acting in or near to the place at which the service has terminated, or at which the seaman or apprentice has been discharged, or at which any person upon whom the claim is made is or resides, or in Scotland either before any such justices or before the sheriff of the county within which any such place is situated, for any amount of wages due to such seamen or apprentice not exceeding fifty pounds over and above the costs of any proceeding for the recovery thereof, so soon as the same becomes payable; and every order made by such justices or sheriff in the matter shall be final.

Seamen may sue for wages in a summary manner.

189. No suit or proceeding for the recovery of wages under the sum of fifty pounds shall be instituted by or on behalf of any seaman or apprentice in any Court of Admiralty or Vice-Admiralty, or in the Court of Session in Scotland, or in any Superior Court of Record in her Majesty's dominions, unless the owner of the ship is adjudged bankrupt or declared insolvent, or unless the ship is under arrest or is sold by the authority of any such Court as aforesaid, or unless any justices acting under the authority of this Act refer the case to be adjudged by such Court, or unless neither the owner nor master is or resides within twenty miles of the place where the seaman or apprentice is discharged or put ashore.

Restrictions on suits for wages in Superior Courts.

190. No seaman who is engaged for a voyage or engagement which is to terminate in the United Kingdom shall be entitled to sue in any Court abroad for wages, unless he is discharged with such sanction as herein required and with the written consent of the master, or proves such ill-usage on the part of the master or by his authority as to warrant reasonable apprehension of danger to the life of such seaman if he were to remain on board; but, if any seaman on his return to the United Kingdom proves that the master or owner has been guilty of any conduct or default which but for this enactment would have entitled the seaman to sue for wages before the termination of the

No seaman to sue for wages abroad, except in cases of discharge or of danger to life.

**M. S. Act,  
1854.**

Master to  
have same  
remedies for  
wages as  
seamen.

Wages of  
seaman  
dying  
during  
voyage  
recoverable.

On dis-  
charge of  
seamen  
abroad, by  
sale of ship  
or other-  
wise, certi-  
ficates of dis-  
charge to be  
given, and  
seamen to  
be sent  
home at  
expense of  
owner.

voyage or engagement, he shall be entitled to recover in addition to his wages such compensation not exceeding twenty pounds as the Court hearing the case thinks reasonable.

191. Every master of a ship shall, so far as the case permits, have the same rights, liens, and remedies for the recovery of his wages which by this Act or by any law or custom any seaman, not being a master, has for the recovery of his wages; and, if in any proceeding in any Court of Admiralty or Vice-Admiralty touching the claim of a master to wages any right of set-off or counterclaim is set up, it shall be lawful for such Court to enter into and adjudicate upon all questions and to settle all accounts then arising or outstanding and unsettled between the parties to the proceeding, and to direct payment of any balance which is found to be due.

196. . . . . And all money, wages, and effects of any seaman or apprentice dying during a voyage shall be recoverable in the same Courts and by the same modes of proceeding by which seamen are hereby enabled to recover wages due to them.

#### LEAVING SEAMEN ABROAD.

205. Whenever any British ship is transferred or disposed of at any place out of her Majesty's dominions, and any seaman or apprentice belonging thereto does not in the presence of some British consular officer, or, if there is no such consular officer there, in the presence of one or more respectable British merchants residing at the place and not interested in the said ship, signify his consent in writing to complete the voyage if continued, and whenever the service of any seaman or apprentice belonging to any British ship terminates at any place out of her Majesty's dominions, the master shall give to each such seaman or apprentice a certificate of discharge in the form sanctioned by the Board of Trade as aforesaid, and in the case of any certificated mate whose certificate he has retained shall return such certificate to him, and shall also, besides paying the wages to which such seaman or apprentice is entitled, either provide him with adequate employment on board some other British ship bound to the port in her Majesty's dominions at which he was originally shipped, or to such other port in the United Kingdom as is agreed upon by him, or furnish the means of sending him back to such port, or provide him with a passage home, or deposit with such consular officer or such merchant or merchants as aforesaid such a sum of money as is by such officer or merchants deemed sufficient to defray the expenses of his subsistence and passage home; and such consular officer or merchants shall indorse upon the agreement of the ship which the seaman or apprentice is leaving the particulars of such payment, provision, or deposit; and if the master refuses or neglects to comply with the requirements of this section, such expenses as last aforesaid, if defrayed by such consular officer or by any other person, shall, unless such seaman or apprentice has been guilty of barratry, be a charge upon the ship to which such seaman or apprentice belonged and upon the owner for the time being thereof, and may be recovered against such owners, with costs, at the suit of the consular officer or other person defraying such expenses, or, in case the same has been allowed to the consular officer out of the public moneys, as a debt due to her Majesty either by ordinary pro-

cess of law, or in the manner in which seamen are hereby enabled to recover wages; and such expenses, if defrayed by the seaman or apprentice, shall be recoverable as wages due to him.

**M. S. Act,  
1854.**

209. Every master of any British ship who leaves any seaman or apprentice on shore at any place abroad in or out of her Majesty's dominions under a certificate of his unfitness or inability to proceed on the voyage, shall deliver to one of the functionaries aforesaid or (in the absence of such functionaries) to the merchants by whom such certificate is signed, or, if there be but one respectable merchant resident at such place, to him, a full and true account of the wages due to such seaman or apprentice, such account when delivered to a consular officer to be in duplicate, and shall pay the same either in money or by a bill drawn upon the owner; and, in the case of every bill so drawn, such functionary, merchants or merchant as aforesaid, shall by indorsement certify thereon that the same is drawn for money due on account of a seaman's wages, and shall also indorse the amount for which such bill is drawn, with such further particulars in respect of the case as the Board of Trade requires, upon the agreement of the ship; and every such master as aforesaid who refuses or neglects to deliver a full account of such wages, and pay the amount thereof in money or by bill as hereinbefore required, shall for every such offence or default be liable, in addition to the payment of the wages, to a penalty not exceeding ten pounds; and every such master who delivers a false account of such wages shall, for every such offence, in addition to the payment of the wages, incur a penalty not exceeding twenty pounds. See sec. 19 of 25 & 26 Vict. c. 63.

Wages to be paid when seamen are left behind on ground of inability.

210. Every such payment as last aforesaid, whether by bill or in money, shall, if made in any British possession, be made to the seaman or apprentice himself, and, if made out of her Majesty's dominions, to the consular officer, who shall, if satisfied with the account, indorse on one of the duplicates thereof a receipt for the amount paid or bill delivered, and shall return the same to the master; and the master shall, within forty-eight hours after his return to his port of destination in the United Kingdom, deliver the same to the shipping master there; and the consular officer shall retain the other duplicate of the said account, and shall, if the seaman or apprentice subsequently obtains employment at or otherwise quits the port, deduct out of the sum received by him as aforesaid any expenses which have been incurred by him in respect of the subsistence of the seaman or apprentice under the provisions herein contained, except such as the master or owner of the ship is hereby required to pay, and shall pay the remainder to the seaman or apprentice, and shall also deliver to him an account of the sums so received and expended on his behalf; and shall, if the seaman or apprentice dies before his ship quits the port, deal with the same in the manner hereinafter specified in that behalf; and shall, if the seaman or apprentice is sent home at the public expense under the provisions herein contained, account for the amount received to the Board of Trade; and such amount shall, after deducting any expenses which have been duly incurred in respect of such seaman or apprentice, except such as the master or owner of the ship is hereby required to pay, be dealt with as wages to which he is entitled, and shall be paid accordingly.

Such wages to be treated as money due to the seamen, subject to payment of expense of their subsistence and passage home.

**M. S. Act,  
1854**

Power to sue  
for the  
amount ad-  
vanced for  
the relief of  
seamen left  
abroad.

**213.** If any seaman or apprentice belonging to any British ship is discharged or left behind at any place out of the United Kingdom, without full compliance on the part of the master with all the provisions in that behalf in this Act contained, and becomes distressed and is relieved under the provisions of this Act, or if any subject of her Majesty, after having been engaged by any person (whether acting as principal or agent) to serve in any ship belonging to any foreign power, or to the subject of any foreign power, becomes distressed and is relieved as aforesaid, the wages (if any) due to such seaman or apprentice, and all expenses incurred for his subsistence, necessary clothing, conveyance home, and burial, in case he should die abroad before reaching home, shall be a charge upon the ship, whether British or foreign, to which he so belonged as aforesaid; and the Board of Trade may in the name of her Majesty (besides suing for any penalties which may have been incurred) sue for and recover the said wages and expenses, with costs, either from the master of such ship as aforesaid, or from the person who is owner thereof for the time being, or, in the case of such engagement as aforesaid for service in a foreign ship, from such master or owner, or from the person by whom such engagement was so made as aforesaid; and such sums shall be recoverable either in the same manner as other debts due to her Majesty, or in the same manner and by the same form and process in which wages due to the seaman would be recoverable by him; and, in any proceedings for that purpose, production of the account (if any) to be furnished as hereinbefore is provided in such cases, together with proof of payment by the Board of Trade or by the Paymaster General of the charges incurred on account of any such seaman, apprentice, or other person, shall be sufficient evidence that he was relieved, conveyed home, or buried (as the case may be) at her Majesty's expense. See sec. 16 of the 18 & 19 Vict. c. 91, and sec. 22 of the 25 & 26 Vict. c. 63.

**PROVISIONS, HEALTH, AND ACCOMMODATION.**

Forfeiture  
for frivolous  
complaint.

**222.** If the officer to whom any such complaint as last aforesaid of insufficient provisions, &c., is made, certifies in such statement as aforesaid that there was no reasonable ground for such complaint, each of the parties so complaining shall be liable to forfeit to the owner out of his wages a sum not exceeding one week's wages.

Allowance  
for short or  
bad provi-  
sions.

**223.** In the following cases (that is to say,)

- (1.) If during a voyage the allowance of any of the provisions which any seaman has by his agreement stipulated for is reduced (except in accordance with any regulations for reduction by way of punishment contained in the agreement, and also except for any time during which such seaman wilfully and without sufficient cause refuses or neglects to perform his duty, or is lawfully under confinement for misconduct, either on board or on shore):
- (2.) If it is shown that any of such provisions are or have during the voyage been bad in quality and unfit for use:

The seaman shall receive by way of compensation for such reduction or bad quality, according to the time of its continuance, the following sums, to be paid to him in addition to and to be recoverable as wages (that is to say,)

- (1.) If his allowance is reduced by any quantity not exceeding one-third of the quantity specified in the agreement, a sum not exceeding fourpence a day:
- (2.) If his allowance is reduced by more than one-third of such quantity, eightpence a day:
- (3.) In respect of such bad quality as aforesaid, a sum not exceeding one shilling a day:

M. S. Act,  
1854.

But if it is shown to the satisfaction of the Court before which the case is tried that any provisions the allowance of which has been reduced could not be procured or supplied in proper quantities, and that proper and equivalent substitutes were supplied in lieu thereof, the Court shall take such circumstances into consideration, and shall modify or refuse compensation as the justice of the case may require.

228. The following rules shall be observed with respect to expenses attendant on illness and death (that is to say,)

Expense of medical attendance and subsistence in case of illness, and of burial in case of death, how to be defrayed.

- (1.) If the master or any seaman or apprentice receives any hurt or injury in the service of the ship to which he belongs, the expense of providing the necessary surgical and medical advice, with attendance and medicines, and of his subsistence until he is cured, or dies, or is brought back to some port in the United Kingdom, if shipped in the United Kingdom, or, if shipped in some British possession, to some port in such possession, and of his conveyance to such port, and the expense (if any) of his burial, shall be defrayed by the owner of such ship, without any deduction on that account from the wages of such master, seaman, or apprentice:
- (2.) If the master or any seaman or apprentice is on account of any illness temporarily removed from his ship for the purpose of preventing infection, or otherwise for the convenience of the ship, and subsequently returns to his duty, the expense of such removal and of providing the necessary advice with attendance and medicines and of his subsistence whilst away from the ship, shall be defrayed in like manner:
- (3.) The expense of all medicines and surgical or medical advice and attendance given to any master, seaman, or apprentice whilst on board his ship shall be defrayed in like manner:
- (4.) In all other cases any reasonable expenses duly incurred by the owner for any seaman in respect of illness, and also any reasonable expenses duly incurred by the owner in respect of the burial of any seaman or apprentice who dies whilst on service, shall, if duly proved, be deducted from the wages of such seaman or apprentice.

229. If any such expenses in respect of the illness, injury, or hurt of any seaman or apprentice as are to be borne by the owner are paid by any consular officer or other person on behalf of her Majesty, or if any other expenses in respect of the illness, injury, or hurt of any seaman or apprentice whose wages are not accounted for to such officer under the provisions hereinbefore contained in that behalf are so paid, such expenses shall be repaid to such officer or other person by the master of the ship, and, if not so repaid, the amount thereof, with costs, shall be a charge upon the ship, and be recoverable from the said master or from the owner of the ship for the time being as a debt due to her Majesty, and shall be recoverable

Expenses, if paid by consul, to be recoverable from owner.

**M. S. Act, 1854.** either by ordinary process of law or in the manner in which seamen are hereby enabled to recover wages ; and, in any proceeding for the recovery thereof, the production of a certificate of the facts, signed by such officer or other person, together with such vouchers (if any) as the case requires, shall be sufficient proof that the said expenses were duly paid by such consular officer or other person as aforesaid.

**PROTECTION OF SEAMEN FROM IMPOSITION.**

Sale of and charge upon wages to be invalid.

**233.** No wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any Court ; and every payment of wages to a seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of such wages, or of any attachment, incumbrance, or arrestment thereon ; and no assignment or sale of such wages or of salvage made prior to the accruing thereof shall bind the party making the same ; and no power of attorney or authority for the receipt of any such wages or salvage shall be irrevocable.

No debt exceeding five shillings recoverable till end of voyage.

**234.** No debt exceeding in amount five shillings, incurred by any seaman after he has engaged to serve, shall be recoverable until the service agreed for is concluded.

**DISCIPLINE.**

Misconduct endangering ship or life or limb a misdemeanour.

**239.** Any master of or any seaman or apprentice belonging to any British ship who by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, does any act tending to the immediate loss, destruction, or serious damage of such ship, or tending immediately to endanger the life or limb of any person belonging to or on board of such ship, or who by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, refuses or omits to do any lawful act proper and requisite to be done by him for preserving such ship from immediate loss, destruction, or serious damage, or for preserving any person belonging to or on board of such ship from immediate danger to life or limb, shall for every such offence be deemed guilty of a misdemeanour.

Offences of seamen and apprentices, and their punishments.

**243.** Whenever any seaman who has been lawfully engaged, or any apprentice to the sea service, commits any of the following offences he shall be liable to be punished summarily as follows (that is say,)

Desertion.

(1.) For desertion he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour, and also to forfeit all or any part of the clothes and effects he leaves on board, and all or any part of the wages or emoluments which he has then earned, and also, if such desertion takes place abroad, at the discretion of the Court, to forfeit all or any part of the wages or emoluments he may earn in any other ship in which he may be employed until his next return to the United Kingdom, and to satisfy any excess of wages paid by the master or owner of the ship from which he deserts to any substitute engaged in his place at a higher rate of wages than the rate stipulated to be paid to him :

Neglecting or refusing to join, or to

(2.) For neglecting or refusing, without reasonable cause, to join his ship or to proceed to sea in his ship, or for absence

- without leave at any time within twenty-four hours of the ship's sailing from any port, either at the commencement or during the progress of any voyage, or for absence at any time without leave and without sufficient reason from his ship or from his duty, not amounting to desertion or not treated as such by the master, he shall be liable to imprisonment for any period not exceeding ten weeks, with or without hard labour, and also, at the discretion of the Court, to forfeit out of his wages a sum not exceeding the amount of two days' pay, and in addition for every twenty-four hours of absence either a sum not exceeding six days' pay, or any expenses which have been properly incurred in hiring a substitute :
- (3.) For quitting the ship without leave after her arrival at her port of delivery and before she is placed in security, he shall be liable to forfeit out of his wages a sum not exceeding one month's pay :
- (4.) For wilful disobedience to any lawful command he shall be liable to imprisonment for any period not exceeding four weeks, with or without hard labour, and also, at the discretion of the Court, to forfeit out of his wages a sum not exceeding two days' pay :
- (5.) For continued wilful disobedience to lawful commands, or continued wilful neglect of duty, he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour, and also, at the discretion of the Court, to forfeit for every twenty-four hours' continuance of such disobedience or neglect either a sum not exceeding six days' pay, or any expenses which have been properly incurred in hiring a substitute :
- (6.) For assaulting any master or mate he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour :
- (7.) For combining with any other or others of the crew to disobey lawful commands, or to neglect duty, or to impede the navigation of the ship or the progress of the voyage, he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour :
- (8.) For wilfully damaging the ship, or embezzling or wilfully damaging any of her stores or cargo, he shall be liable to forfeit out of his wages a sum equal in amount to the loss thereby sustained, and also, at the discretion of the Court, to imprisonment for any period not exceeding twelve weeks, with or without hard labour :
- (9.) For any act of smuggling of which he is convicted, and whereby loss or damage is occasioned to the master or owner, he shall be liable to pay to such master or owner such a sum as is sufficient to reimburse the master or owner for such loss or damage ; and the whole or a proportionate part of his wages may be retained in satisfaction or on account of such liability, without prejudice to any further remedy.

**M. S. Act,  
1854.**

proceed to sea, absence within twenty-four hours before sailing and absence without leave.

Quitting without leave before ship is secured.

Act of disobedience.

Continued disobedience.

Assault on officers.

Combining to disobey.

Wilful damage and embezzlement.

Act of smuggling causing loss to owner.

**247.** Whenever any seaman or apprentice is brought before any Deserters



**M. S. Act,  
1854.**

may be sent  
on board in  
lieu of being  
imprisoned.

Entries and  
certificates  
of desertion  
abroad to be  
copied, sent  
home, and  
admitted in  
evidence.

Facilities  
for proving  
desertion,  
so far as con-  
cerns  
forfeiture of  
wages.

Costs of pro-  
curing im-  
prisonment  
may to the  
extent of  
three  
pounds be  
deducted  
from wages.

Amount of  
forfeiture,  
how to be  
ascertained  
when

Court on the ground of his having neglected or refused to join or to proceed to sea in any ship in which he is engaged to serve, or of having deserted or otherwise absented himself therefrom without leave, such Court may, if the master or the owner or his agent so requires, instead of committing the offender to prison, cause him to be conveyed on board for the purpose of proceeding on the voyage or deliver him to the master or any mate of the ship, or the owner or his agent, to be by them so conveyed, and may in such case order any costs and expenses properly incurred by or on behalf of the master or owner by reason of the offence to be paid by the offender, and, if necessary, to be deducted from any wages which he has then earned, or which by virtue of his then existing engagement he may afterwards earn.

249. In all cases of desertion from any ship in any place abroad, the master shall produce the entry of such desertion in the official log-book to the person or persons hereby required to indorse on the agreement a certificate of such desertion; and such person or persons shall thereupon make and certify a copy of such entry and also a copy of the said certificate of desertion; and, if such person is a public functionary, he shall, and in other cases the said master shall, forthwith transmit such copies to the registrar-general of seamen in England; and the said registrar shall, if required, cause the same to be produced in any legal proceedings; and such copies, if purporting to be so made and certified as aforesaid, and certified to have come from the custody of the said registrar, shall in any legal proceeding relating to such desertion be received as evidence of the entries therein appearing.

250. Whenever a question arises whether the wages of any seaman or apprentice are forfeited for desertion, it shall be sufficient for the party insisting on the forfeiture to show that such seaman or apprentice was duly engaged in or that he belonged to the ship from which he is alleged to have deserted, and that he quitted such ship before the completion of the voyage or engagement, or, if such voyage was to terminate in the United Kingdom and the ship has not returned, that he is absent from her, and that an entry of the desertion has been duly made in the official log-book; and thereupon the desertion shall, so far as relates to any forfeiture of wages or emoluments under the provisions hereinbefore contained, be deemed to be proved, unless the seaman or apprentice can produce a proper certificate of discharge, or can otherwise show to the satisfaction of the Court that he had sufficient reasons for leaving his ship.

251. Whenever in any proceeding relating to seamen's wages it is shown that any seaman or apprentice has in the course of the voyage been convicted of any offence by any competent tribunal, and rightfully punished therefor by imprisonment or otherwise, the Court hearing the case may direct a part of the wages due to such seaman, not exceeding three pounds, to be applied in reimbursing any costs properly incurred by the master in procuring such conviction and punishment.

252. Whenever any seaman contracts for wages by the voyage, or by the run, or by the share, and not by the month or other stated period of time, the amount of forfeiture to be incurred under this Act shall be taken to be an amount bearing the same proportion to

the whole wages or share as a calendar month or other the period hereinbefore mentioned in fixing the amount of such forfeiture (as the case may be) bears to the whole time spent in the voyage; and, if the whole time spent in the voyage does not exceed the period for which the pay is to be forfeited, the forfeiture shall extend to the whole wages or share.

M. S. Act,  
1854.

seaman  
contract for  
the voyage.

253. All clothes, effects, wages, and emoluments which under the provisions hereinbefore contained are forfeited for desertion, shall be applied in the first instance in or towards the reimbursement of the expenses occasioned by such desertion to the master or owner of the ship from which the desertion has taken place; and may, if earned subsequently to the desertion, be recovered by such master, or by the owner or his agent, in the same manner as the deserter might have recovered the same if they had not been forfeited; and in any legal proceeding relating to such wages the Court may order the same to be paid accordingly; and, subject to such reimbursement, the same shall be paid into the receipt of her Majesty's Exchequer in such manner as the Treasury may direct, and shall be carried to and form part of the Consolidated Fund of the United Kingdom; and in all other cases of forfeiture of wages under the provisions hereinbefore contained, the forfeiture shall, in the absence of any specific directions to the contrary, be for the benefit of the master or owner by whom the wages are payable.

Application  
of for-  
feitures.

254. Any question concerning the forfeiture of or deductions from the wages of any seaman or apprentice may be determined in any proceeding lawfully instituted with respect to such wages, notwithstanding that the offence in respect of which such question arises, though hereby made punishable by imprisonment as well as forfeiture, has not been made the subject of any criminal proceeding.

Questions of  
forfeitures  
may be  
decided in  
suits for  
wages.

255. If any seaman on or before being engaged wilfully and fraudulently makes a false statement of the name of his last ship or last alleged ship, or wilfully and fraudulently makes a false statement of his own name, he shall incur a penalty not exceeding five pounds; and such penalty may be deducted from any wages he may earn by virtue of such engagement as aforesaid, and shall, subject to reimbursement of the loss and expenses (if any) occasioned by any previous desertion, be paid and applied in the same manner as other penalties payable under this Act.

Penalty for  
false state-  
ment as to  
last ship or  
name.

256. Whenever any seaman commits an act of misconduct for which his agreement imposes a fine, and which it is intended to punish by enforcing such fine, an entry thereof shall be made in the official log-book, and a copy of such entry shall be furnished, or the same shall be read over to the offender, and an entry of such reading over and of the reply (if any) made by the offender shall be made, in the manner and subject to the conditions hereinbefore specified with respect to the offences against discipline specified in and punishable under this Act; and such fine shall be deducted and paid over as follows, (that is to say,) if the offender is discharged in the United Kingdom, and the offence and such entries in respect thereof as aforesaid are proved, in the case of a foreign-going ship to the satisfaction of the shipping master before whom the offender is discharged, and in the case of a home-trade ship to the satisfaction of the shipping master at or nearest to the place at which the crew is

Fines to be  
deducted  
from wages,  
and paid to  
shipping  
master.

**M. S. Act, 1854.** discharged, the master or owner shall deduct such fine from the wages of the offender, and pay the same over to such shipping master; and if before the final discharge of the crew in the United Kingdom any such offender as aforesaid enters into any of her Majesty's ships, or is discharged abroad, and the offence and such entries as aforesaid are proved to the satisfaction of the officer in command of the ship into which he so enters, or of the consular officer, officer of customs, or other person by whose sanction he is so discharged, the fine shall thereupon be deducted as aforesaid, and an entry of such deduction shall then be made in the official log-book (if any) and signed by such officer or other person; and on the return of the ship to the United Kingdom the master or owner shall pay over such fine, in the case of foreign-going ships, to the shipping master before whom the crew is discharged, and in the case of home-trade ships to the shipping master at or nearest to the place at which the crew is discharged; and if any master or owner neglects or refuses to pay over any such fine in manner aforesaid, he shall for each such offence incur a penalty not exceeding six times the amount of the fine retained by him: Provided that no act of misconduct for which any such fine as aforesaid has been inflicted and paid shall be otherwise punished under the provisions of this Act.

### THE MERCHANT SHIPPING AMENDMENT ACT, 1855.

18 & 19 VICT. c. 91.

#### MASTERS AND SEAMEN (PART III. OF MERCHANT SHIPPING ACT, 1854).

Extension of provisions concerning the relief of destitute seamen.

16. The Board of Trade may issue instructions concerning the relief to be administered to distressed seamen and apprentices, in pursuance of the two hundred and eleventh and two hundred and twelfth sections of the Merchant Shipping Act, 1854, and may by such instructions determine in what cases and under what circumstances and conditions such relief is to be administered; and all powers of recovering expenses incurred with respect to distressed seamen and apprentices, which by the two hundred and thirteenth section of the said Act are given to the Board of Trade, shall extend to all expenses incurred by any foreign government for the purposes aforesaid, and repaid to such government by her Majesty's government, and shall likewise extend to any expenses incurred by the conveying home such seamen or apprentices in foreign as well as British ships; and all provisions concerning the relief of distressed seamen and apprentices, being subjects of her Majesty, which are contained in the said sections of the said Act, and in this section, shall extend to such seamen and apprentices, not being subjects of her Majesty, as are reduced to distress in foreign parts by reason of their having been shipwrecked, discharged, or left behind from any British ship; subject, nevertheless, to such modifications and directions concerning the cases in which relief is to be given to such foreigners, and the country to which they are to be sent, as the Board of Trade may, under the circumstances, think fit to make and issue. (17 & 18 Vict. c. 104, ss. 211, 212, and 213.)

THE MERCHANT SHIPPING ACT, 1862.

25 & 26 VICT. c. 63.

21. The wages of seamen or apprentices who are lost with the ship to which they belong shall be dealt with as follows (that is to say):

M. S. Act,  
1862.

- (1.) The Board of Trade may recover the same from the owner of the ship in the same manner in which seamen's wages are recoverable:
- (2.) In any proceedings for the recovery of such wages, if it is shown by some official return produced out of the custody of the registrar-general of seamen, or by other evidence, that the ship has twelve months or upwards before the institution of the proceeding left a port of departure, and if it is not shown that she has been heard of within twelve months after such departure, she shall be deemed to have been lost with all hands on board, either immediately after the time she was last heard of, or at such later time as the Court hearing the case may think probable:
- (3.) The production out of the custody of the registrar-general of seamen, or of the Board of Trade, of any duplicate agreement or list of the crew made out at the time of the last departure of the ship from the United Kingdom, or of a certificate purporting to be a certificate from a consular or other public officer at any port abroad, stating that certain seamen or apprentices were shipped in the ship from the said port shall, in the absence of proof to the contrary, be sufficient proof that the seamen or apprentices therein named were on board at the time of the loss:
- (4.) The Board of Trade shall deal with such wages in the manner in which they deal with wages of other deceased seamen and apprentices under the Principal Act.

Recovery of  
wages, &c.,  
of seamen  
lost with  
their ship.

THE MERCHANT SHIPPING ACT, 1873.

36 & 37 VICT. c. 85.

7. Any agreement with a seaman made under sect. 149 of the Merchant Shipping Act, 1854, may, instead of stating the nature and duration of the intended voyage or engagement as by that section required, state the maximum period of the voyage or engagement, and the places or parts of the world (if any) to which the voyage or engagement is not to extend.

Agreement  
may state  
maximum  
period of  
voyage.

8. The owner or master of any British vessel engaged in fishing off the coast of the United Kingdom, may enter into an agreement with any person employed on such vessel, that such person shall be

Agreement  
as to profits  
of fishing  
adventure.

**M. S. Act, 1873.** remunerated wholly by a share in the profit of the fishing adventure.

Every such agreement shall be in writing or in print, or partly in writing and partly in print, and shall be signed by the contracting parties in the presence of a superintendent or deputy-superintendent of a mercantile marine office.

The superintendent or deputy-superintendent, shall, before such agreement is signed, read and (if necessary) explain the same to the contracting parties, and shall attest the signature of the agreement and certify that it has been read to and agreed to by the contracting parties. Any such agreement, if made in the manner by this section required, shall be valid and binding on all the contracting parties, notwithstanding anything contained in section 182 of the Merchant Shipping Act, 1854.

Compensation to seaman for detention.

9. If a seaman or apprentice belonging to any ship is detained on a charge of desertion or any kindred offence, and, if upon a survey of the ship being made under section 7 of the Merchant Shipping Act, 1871, it is proved that she is not in a fit condition to proceed to sea, or that her accommodation is insufficient, the owner or master of the ship shall be liable to pay to such seaman or apprentice such compensation for his detention as the Court having cognisance of the proceedings may award.

#### THE MERCHANT SEAMEN PAYMENT OF WAGES ACT, 1880,

43 & 44 Vict. c. 16.

Conditional advance notes illegal.

2. (1.) After the first day of August, one thousand eight hundred and eighty-one, any document authorising or promising, or purporting to authorise or promise, the future payment of money on account of a seaman's wages conditionally on his going to sea from any port in the United Kingdom, and made before those wages have been earned, shall be void.
- (2.) No money paid in satisfaction or in respect of any such document shall be deducted from a seaman's wages, and no person shall have any right of action, suit, or set-off against the seaman or his assignee in respect of any money so paid or purporting to have been so paid.
- (3.) Nothing in this section shall affect any allotment note made under the Merchant Shipping Act, 1854.

17 & 18 Vict. c. 104. Amendment of 17 & 18 Vict. c. 104, s. 169, as to allotment notes.

3. (1.) Every agreement with a seaman which is required by the Merchant Shipping Act, 1854, to be made in the form sanctioned by the Board of Trade shall, if the seaman so require, stipulate for the allotment of any part not exceeding one half of the wages of the seaman in favour of one or more of the persons mentioned in section one hundred and sixty-nine of the Merchant Shipping Act, 1854, as amended by this section.

17 & 18 Vict. c. 104, s. 169.

- (2.) The allotment may also be made in favour of a savings bank, and in that case shall be in favour of such persons and carried into effect in such manner as may be for the

time being directed by regulations of the Board of Trade, **Wages Act, 1880.** and section one hundred and sixty-nine of the Merchant Shipping Act, 1854, shall be construed as if the said persons were named therein.

17 & 18 Vict.  
c. 104, s. 169.

- (3.) The sum received in pursuance of such allotment by a savings bank shall be paid out only on an application made, through a superintendent of a mercantile marine office or the Board of Trade, by the seaman himself, or, in case of death, by some person to whom the same might be paid under section one hundred and ninety-nine of the Merchant Shipping Act, 1854.
  - (4.) A payment under an allotment note shall begin at the expiration of one month, or, if the allotment is in favour of a savings bank, of three months, from the date of the agreement, or at such later date as may be fixed by the agreement, and shall be paid at the expiration of every subsequent month, or of such other periods as may be fixed by the agreement, and shall be paid only in respect of wages earned before the date of payment.
  - (5.) For the purposes of this section "savings bank" means a savings bank established under one of the Acts mentioned in the first schedule to this Act.
4. In the case of foreign-going ships—
- (1.) The owner or master of the ship shall pay to each seaman on account, at the time when he lawfully leaves the ship at the end of his engagement, two pounds, or one fourth of the balance due to him, whichever is least; and shall pay him the remainder of his wages within two clear days (exclusive of any Sunday, Fast Day in Scotland, or Bank Holiday) after he so leaves the ship.
  - (2.) The master of the ship may deliver the account of wages mentioned in section one hundred and seventy-one of the Merchant Shipping Act, 1854, to the seaman himself at or before the time when he leaves the ship instead of delivering it to a superintendent of a mercantile marine office.
  - (3.) If the seaman consents, the final settlement of his wages may be left to the superintendent of a mercantile marine office under regulations to be made by the Board of Trade, and the receipt of the superintendent shall in that case operate as a release by the seaman under section one hundred and seventy-five of the Merchant Shipping Act, 1854.
  - (4.) In the event of the seaman's wages or any part thereof not being paid or settled as in this section mentioned, then, unless the delay is due to the act or default of the seaman, or to any reasonable dispute as to liability, or to any other cause not being the act or default of the owner or master, the seaman's wages shall continue to run and be payable until the time of the final settlement thereof.
  - (5.) Where a question as to wages is raised before the superintendent of a mercantile marine office between the master or owner of a ship, and a seaman or apprentice, if the amount in question does not exceed five pounds, the superintendent may adjudicate, and the decision of the superintendent in

17 & 18 Vict.  
c. 104, s. 199.

Rules as to  
payment of  
wages.

17 & 18 Vict.  
c. 104, s. 171.

17 & 18 Vict.  
c. 104, s. 175.

**M. S. Act,  
1854.**

Power of  
Court to  
rescind con-  
tract be-  
tween  
owner and  
master and  
seaman or  
apprentice.

the matter shall be final; but, if the superintendent is of opinion that the question is one which ought to be decided by a Court of law, he may refuse to decide it.

8. Where a proceeding is instituted in or before any Court in relation to any dispute between an owner or master of a ship and a seaman or apprentice to the sea service, arising out of or incidental to their relation as such, or is instituted for the purpose of this section, the Court, if, having regard to all the circumstances of the case, they think it just so to do, may rescind any contract between the owner or master and the seaman or apprentice, or any contract of apprenticeship, upon such terms as the Court may think just; and this power shall be in addition to any other jurisdiction which the Court can exercise independently of this section.

For the purposes of this section the term "Court" includes any magistrate or justice having jurisdiction in the matter to which the proceeding relates.

#### (4) *Mortgage.*

### THE MERCHANT SHIPPING ACT, 1854.

17 & 18 Vict. c. 104.

#### MORTGAGES.

Mortgage of  
ships and  
shares  
therein.

66. A registered ship or any share therein may be made a security for a loan or other valuable consideration: and the instrument creating such security, hereinafter termed a "mortgage," shall be in the form marked I in the schedule hereto, or as near thereto as circumstances permit; and on the production of such instrument the registrar of the port at which the ship is registered shall record the same in the register book.

Mortgages  
to be regis-  
tered in  
order of time  
of produc-  
tion.

67. Every such mortgage shall be recorded by the registrar in the order of time in which the same is produced to him for that purpose; and the registrar shall by memorandum under his hand, notify on the instrument of mortgage that the same has been recorded by him, stating the date and hour of such record.

Entry of dis-  
charge of  
mortgage.

68. Whenever any registered mortgage has been discharged, the registrar shall, on the production of the mortgage deed, with a receipt for the mortgage money indorsed thereon, duly signed and attested, make an entry in the register book to the effect that such mortgage has been discharged; and, upon such entry being made, the estate, if any, which passed to the mortgagee shall vest in the same person or persons in whom the same would, having regard to intervening acts and circumstances, if any, have vested if no such mortgage had ever been made.

Priority of  
mortgages.

69. If there is more than one mortgage registered of the same ship or share therein, the mortgagees shall, notwithstanding any express, implied, or constructive notice, be entitled in priority one over the

other according to the date at which each instrument is recorded in the register books, and not according to the date of each instrument itself. M. S. Act,  
1854.

70. A mortgagee shall not by reason of his mortgage be deemed to be the owner of a ship or any share therein, nor shall the mortgagor be deemed to have ceased to be owner of such mortgaged ship or share, except in so far as may be necessary for making such ship or share available as a security for the mortgage debt. Mortgagee  
not to be  
deemed  
owner.

71. Every registered mortgage shall have power absolutely to dispose of the ship or share in respect of which he is registered, and to give effectual receipts for the purchase-money; but, if there are more persons than one registered as mortgagees of the same ship or share, no subsequent mortgage shall, except under the order of some Court capable of taking cognizance of such matters, sell such ship or share without the concurrence of every prior mortgagee. Mortgagee  
to have  
power of  
sale.

72. No registered mortgage of any ship or of any share therein shall be affected by any act of bankruptcy committed by the mortgagor after the date of the record of such mortgage, notwithstanding such mortgagor at the time of his becoming bankrupt may have in his possession and disposition, and be reputed owner of, such ship or share thereof; and such mortgage shall be preferred to any right, claim, or interest in such ship or any share thereof which may belong to the assignees of such bankrupt. Rights of  
mortgagee  
not affected  
by any act  
of bank-  
ruptcy of  
mortgagor.

73. A registered mortgage of any ship or share in a ship may be transferred to any person, and the instrument creating such transfer shall be in the form marked K. in the schedule hereto; and, on the production of such instrument, the registrar shall enter in the register book the name of the transferee as mortgagee of the ship or shares therein mentioned, and shall by memorandum under his hand record on the instrument of transfer that the same has been recorded by him, stating the date and hour of such record. Transfer of  
mortgages.

74. If the interest of any mortgagee in any ship or in any share therein becomes transmitted in consequence of death, bankruptcy, or insolvency, or in consequence of the marriage of any female mortgagee, or by any lawful means other than by a transfer according to the provisions of this Act, such transmission shall be authenticated by a declaration of the person to whom such interest has been transmitted, made in the form marked L. in the schedule hereto, and containing a statement describing the manner in which and the party to whom such property has been transmitted; and such declaration shall be made and subscribed, if the declarant resides at or within five miles of the custom house of the port of registry, in the presence of the registrar, but if beyond that distance in the presence of any registrar or of any justice of the peace, and shall be accompanied by such evidence as is hereinbefore required to authenticate a corresponding transmission of property from one registered owner to another. Transmis-  
sion of in-  
terest of  
mortgagee  
by death,  
bankruptcy,  
or marriage.

75. The registrar, upon the receipt of such declaration and the production of such evidence as aforesaid, shall enter the name of the person or persons entitled under such transmission in the register book as mortgagee or mortgagees of any ship or share in respect of which such transmission has taken place. Entry of  
transmitted  
mortgage.



**M. S. Act,  
1854.**

**CERTIFICATES OF MORTGAGE AND SALE.**

Powers of mortgage and sale may be conferred by certificate.

**76.** Any registered owner, if desirous of disposing by way of mortgage or sale of the ship or share in respect of which he is registered at any place out of the country or possession in which the port of registry of such ship is situate, may apply to the registrar, who shall thereupon enable him to do so by granting such certificates as are hereinafter mentioned, to be called respectively certificates of mortgage or certificates of sale, according as they purport to give a power to mortgage or a power to sell.

Requisites for certificates of mortgage and sale.

**77.** Previously to any certificate of mortgage or sale being granted, the applicant shall state to the registrar, to be by him entered in the register book, the following particulars, (that is to say),

- (1.) The names of the persons by whom the power mentioned in such certificate is to be exercised, and in the case of mortgage the maximum amount of charge to be created, if it is intended to fix any such maximum, and in the case of a sale the minimum price at which a sale is to be made, if it is intended to fix any such minimum :
- (2.) The specific place or places where such power is to be exercised, or if no place be specified, then that it may be exercised anywhere, subject to the provisions hereinafter contained :
- (3.) The limit of time within which such power may be exercised.

Restrictions on certificates of mortgage and sale.

**78.** No certificate of mortgage or sale shall be granted so as to authorize any mortgage or sale to be made—

At any place within the United Kingdom, if the port of registry of the ship be situate in the United Kingdom ; or at any place within the same British possession, if the port of registry is situate within a British possession ; or

By any person not named in the certificate.

Forms of certificates of mortgage and sale.

**79.** Certificates of mortgage and sale shall be in the forms marked respectively M. and N. in the schedule hereto, and shall contain a statement of the several particulars hereinbefore directed to be entered in the register book, and in addition thereto an enumeration of any registered mortgages or certificates of mortgages or sale affecting the ships or shares in respect of which such certificates are given.

Rules as to certificates of mortgage.

**80.** The following rules shall be observed as to certificates of mortgage, (that is to say),

- (1.) The power shall be exercised in conformity with the directions contained in the certificate :
- (2.) A record of every mortgage made thereunder shall be indorsed thereon by a registrar or British consular officer :
- (3.) No mortgage *bonâ fide* made thereunder shall be impeached by reason of the person by whom the power was given dying before the making of such mortgage :
- (4.) Whenever the certificate contains a specification of the place or places at which, and a limit of time not exceeding twelve months within which, the power is to be exercised, no mortgage *bonâ fide* made to a mortgagee without notice shall be impeached by reason of the bankruptcy or insolvency of the person by whom the power was given :

- (5.) Every mortgage which is so registered as aforesaid on the certificate shall have priority over all mortgages of the same ship or share created subsequently to the date of the entry of the certificate in the register book ; and, if there be more mortgages than one so indorsed, the respective mortgagees claiming thereunder shall, notwithstanding any express, implied, or constructive notice, be entitled one before the other according to the date at which a record of each instrument is indorsed on the certificate, and not according to the date of the instrument creating the mortgage :
- (6.) Subject to the foregoing rules, every mortgagee whose mortgage is registered on the certificate shall have the same rights and powers and be subject to the same liabilities as he would have had and been subject to if his mortgage had been registered in the register book instead of on the certificate :
- (7.) The discharge of any mortgage so registered on the certificate may be indorsed thereon by any registrar or British consular officer, upon the production of such evidence as is hereby required to be produced to the registrar on the entry of the discharge of a mortgage in the register book ; and, upon such indorsement being made, the estate, if any, which passed to the mortgagee shall vest in the same person or persons in whom the same would, having regard to intervening acts and circumstances, if any, have vested if no such mortgage had been made :
- (8.) Upon the delivery of any certificate of mortgage to the registrar by whom it was granted he shall, after recording in the register book in such manner as to preserve its priority any unsatisfied mortgage registered thereon, cancel such certificate, and enter the fact of such cancellation in the register book ; and every certificate so cancelled shall be void to all intents.
81. The following rules shall be observed as to certificates of sale, Rules as to certificates of sale.  
 (that is to say,)
- (1.) No such certificate shall be granted except for the sale of an entire ship :
- (2.) The power shall be exercised in conformity with the directions contained in the certificate :
- (3.) No sale *bonâ fide* made to a purchaser for valuable consideration shall be impeached by reason of the person by whom the power was given dying before the making of such sale :
- (4.) Whenever the certificate contains a specification of the place or places at which, and a limit of time not exceeding twelve months within which, the power is to be exercised, no sale *bonâ fide* made to a purchaser for valuable consideration without notice shall be impeached by reason of the bankruptcy or insolvency of the person by whom the power was given :
- (5.) Any transfer made to a person qualified to be the owner of British ships shall be by bill of sale in the form hereinbefore mentioned, or as near thereto as circumstances permit :
- (6.) If the ship is sold to a party qualified to hold British ships,

**M. S. Act,  
1854.**

the ship shall be registered anew ; but notice of all mortgages enumerated on the certificate of sale shall be entered in the register book :

- (7.) Previously to such registry anew there shall be produced to the registrar required to make the same bill of sale by which the ship is transferred, the certificate of sale, and the certificate of registry of such ship :
- (8.) Such last mentioned registrar shall retain the certificates of sale and registry, and, after having indorsed on both of such instruments an entry of the fact of a sale having taken place, shall forward the said certificates to the registrar of the port appearing on such certificates to be the former port of registry of the ship ; and such last-mentioned registrar shall thereupon make a memorandum of the sale in his register book, and the registry of the ship in such book shall be considered as closed, except as far as relates to any unsatisfied mortgages or existing certificates of mortgage entered therein :
- (9.) On such registry anew the description of the ship contained in her original certificate of registry may be transferred to the new register book, without her being re-surveyed, and the declaration to be made by the purchaser shall be the same as would be required to be made by an ordinary transferee :
- (10.) If the ship is sold to a party not qualified to be the owner of a British ship, the bill of sale by which the ship is transferred, the certificate of sale, and the certificate of registry shall be produced to some registrar or consular officer, who shall retain the certificates of sale and registry, and, having indorsed thereon the fact of such ship having been sold to persons not qualified to be owners of British ships, shall forward such certificates to the registrar of the port appearing on the certificate of registry to be the port of registry of such ship ; and such last-mentioned registrar shall thereupon make a memorandum of the sale in his register book ; and the registry of the ship in such book shall be considered as closed, except so far as relates to any unsatisfied mortgages or existing certificates of mortgage entered therein :
- (11.) If upon a sale being made to an unqualified person default is made in the production of such certificates as are mentioned in the last rule, such unqualified person shall be considered by British law as having acquired no title to or interest in the ship ; and further, the party upon whose application such certificate was granted, and the persons exercising the power, shall each incur a penalty not exceeding one hundred pounds :
- (12.) If no sale is made in conformity with the certificate of sale, such certificate shall be delivered to the registrar by whom the same was granted ; and such registrar shall thereupon cancel it, and enter the fact of such cancellation in the register book ; and every certificate so cancelled shall be void to all intents.

Revocation  
of certifi-

83. The registered owner for the time being of any ship or share therein in respect of which a certificate of mortgage or sale has been

granted, specifying the place or places where the power thereby given is to be exercised, may, by an instrument under his hand made in the form O. in the schedule hereto, or as near thereto as circumstances permit, authorize the registrar by whom such certificate was granted to give notice to the registrar or consular officer, registrars or consular officers, at such place or places, that such certificate is revoked; and notice shall be given accordingly; and all registrars or consular officers receiving such notice shall record the same, and shall exhibit the same to all persons who may apply to them for the purpose of effecting or obtaining a mortgage or transfer under the said certificate of mortgage or sale; and, after such notice has been so recorded, the said certificate shall, so far as concerns any mortgage or sale to be thereafter made at such place, be deemed to be revoked and of no effect; and every registrar or consular officer recording any such notice shall thereupon state to the registrar by whom the certificate was granted whether any previous exercise of the power to which such certificate refers has taken place.

**M. S. Act,  
1854.**

certificates of mortgage and sale.

91. The transfer of the registry of any ship in manner aforesaid shall not in any way affect the rights of the several persons interested, either as owners or mortgagees, in such ship, but such rights shall in all respects be maintained and continue in the same manner as if no such transfer had been effected. See sec. 12 of the 18 & 19 Vict. c. 91.

Transfer of registry not to affect rights of owners.

THE MERCHANT SHIPPING ACT AMENDMENT  
ACT, 1862.

25 & 26 VICT. C. 63.

REGISTRY AND MEASUREMENT OF TONNAGE (PART II. OF MERCHANT SHIPPING ACT, 1854).

3. It is hereby declared that the expression "beneficial interest," whenever used in the second part of the Principal Act, includes interests arising under contract and other equitable interests; and the intention of the said Act is that, without prejudice to the provisions contained in the said Act for preventing notice of trusts from being entered in the register book or received by the registrar, and without prejudice to the powers of disposition and of giving receipts conferred by the said Act on registered owners and mortgagees, and without prejudice to the provisions contained in the said Act relating to the exclusion of unqualified persons from the ownership of British ships, equities may be enforced against owners and mortgagees of ships in respect of their interest therein, in the same manner as equities may be enforced against them in respect of any other personal property. See secs. 37 (2),—38 (5),—39 (5),—100.

Equities not excluded by Merchant Shipping Act.

M. S. Act,  
1854.

(5.) *Forfeiture of Ships.*

THE MERCHANT SHIPPING ACT, 1854.

17 & 18 VICT. c. 104.

Penalty for  
using im-  
proper  
certificate.

52. If the master or owner of any ship uses or attempts to use for the navigation of such ship a certificate of registry not legally granted in respect of such ship, he shall be guilty of a misdemeanour, and it shall be lawful for any commissioned officer on full pay in the military or naval service of her Majesty, or any British officer of customs, or any British consular officer, to seize and detain such ship and to bring her for adjudication before the High Court of Admiralty in England or Ireland or any Court having Admiralty jurisdiction in her Majesty's dominions; and, if such Court is of opinion that such use or attempt at use has taken place, it shall pronounce such ship, with her tackle, apparel, and furniture, to be forfeited to her Majesty, and may award such portion of the proceeds arising from the sale of such ship as it may think just to the officer so bringing in the same for adjudication.

Penalties.

103. The offences hereinafter mentioned shall be punishable as follows:—

For unduly  
assuming a  
British  
character.

(1.) If any person uses the British flag and assumes the British national character on board any ship owned in whole or in part by any persons not entitled by law to own British ships, for the purpose of making such ship appear to be a British ship, such ship shall be forfeited to her Majesty, unless such assumption has been made for the purpose of escaping capture by an enemy or by a foreign ship of war in exercise of some belligerent right: and in any proceeding for enforcing any such forfeiture, the burden of proving a title to use the British flag and assume the British national character shall lie upon the person using and assuming the same.

For conceal-  
ment of  
British or  
assumption  
of foreign  
character.

(2.) If the master or owner of any British ship does or permits to be done any matter or thing, or carries or permits to be carried any papers or documents, with intent to conceal the British character of such ship from any person entitled by British law to inquire into the same, or to assume a foreign character, or with intent to deceive any such person as lastly hereinbefore mentioned, such ship shall be forfeited to her Majesty; and the master, if he commits or is privy to the commission of the offence, shall be guilty of a misdemeanour.

For acquir-  
ing owner-  
ship if un-  
qualified.

(3.) If any unqualified person, except in the case of such transmitted interests as are hereinbefore mentioned, acquires as owner any interest, either legal or beneficial, in a ship using a British flag and assuming the British character, such interest shall be forfeited to her Majesty.

For false  
declaration  
of owner-  
ship.

(4.) If any person, on behalf of himself or any other person or body of persons, wilfully makes a false declaration touching the qualification of himself or such other person or body of persons to own British ships or any shares therein, the declarant shall be guilty of a misdemeanour; and the ship

or share in respect of which such declaration is made, if the same has not been forfeited under the foregoing provision, shall, to the extent of the interest therein of the person making the declaration, and, unless it is shown that he had no authority to make the same, of the parties on behalf of whom such declaration is made, be forfeited to her Majesty.

M. S. Act,  
1854.

And, in order that the above provisions as to forfeitures may be carried into effect, it shall be lawful for any commissioned officer on full pay in the military or naval service of her Majesty, or any British officer of customs, or any British consular officer, to seize and detain any ship which has, either wholly or as to any share therein, become subject to forfeiture as aforesaid, and to bring her for adjudication before the High Court of Admiralty in England or Ireland, or any Court having Admiralty jurisdiction in her Majesty's dominions; and such Court may thereupon make such order in the case as it may think fit, and may award to the officer bringing in the same for adjudication such portion of the proceeds of the sale of any forfeited ship or share as it may think right.

104. No such officer as aforesaid shall be responsible, either civilly or criminally, to any person whomsoever, in respect of the seizure or detention of any ship that has been seized or detained by him in pursuance of the provisions herein contained, notwithstanding that such ship is not brought in for adjudication, or, if so brought in, is declared not to be liable to forfeiture, if it is shown to the satisfaction of the Judge or Court before whom any trial relating to such ship or such seizure or detention is held that there were reasonable grounds for such seizure or detention; but, if no such grounds are shown, such Judge or Court may award payment of costs and damages to any party aggrieved, and make such other order in the premises as it thinks just.

Officer not  
liable for  
any seizure  
made on  
reasonable  
grounds.



## APPENDIX II.

### ORDERS AS TO COSTS AND FEES.

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#### PART I.

#### COSTS.

#### ADDITIONAL RULES OF COURT UNDER THE SUPREME A.D. 1875. COURT OF JUDICATURE ACT, 1875.

#### ORDER VI.

The following regulations as to costs of proceedings in the *Costs*.  
Supreme Court of Judicature shall regulate such costs from the commencement of the Supreme Court of Judicature Acts, 1873 and 1875 :—

1. Solicitors shall be entitled to charge and be allowed the fees set forth in the column headed "lower scale" in the schedule hereto,—

In all causes and matters by the 34th section of the said Act assigned to the Probate, Divorce, and Admiralty Division of the Court.

3. Notwithstanding these rules, the Court or Judge may in any case direct the fees set forth in either of the said two columns to be allowed to all or either or any of the parties, and as to all or any part of the costs.

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#### REGULÆ GENERALES,

[3rd April, 1876.]

#### ADMIRALTY DIVISION.

The fees on the higher scale are to be allowed in actions for salvage when £1000 or upwards is awarded.

In actions for damage by collision to plaintiffs when £1000 or upwards is recovered, exclusive of interest :

To defendants when £2000 or upwards is claimed by the plaintiffs :

But, in any case in which the fees on the higher scale are sanctioned, the taxing officer is to exercise a discretion as to the extent to which those under the heads appearances, instructions, perusals, and attendances are to be allowed.



A.D. 1875.

## THE SCHEDULE ABOVE REFERRED TO (a).

An order or rule herein referred to by number shall mean the order or rule so numbered in the first schedule to the Supreme Court of Judicature Act, 1875.

## WRITS, SUMMONSES, AND WARRANTS.

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Writ of summons for the commencement of any action ... ..	0	6	8	0	13	4
And for indorsement of claim, if special ... ..	0	5	0	0	5	0
Concurrent writ of summons ... ..	0	6	8	0	6	8
Renewal of a writ of summons ... ..	0	6	8	0	6	8
Notice of a writ for service in lieu of writ out of jurisdiction ... ..	0	4	0	0	5	0
Writ of inquiry ... ..	1	1	0	1	1	0
Or per folio ... ..	0	1	4	0	1	4
Writ of <i>subpœna ad testificandum</i> or <i>duces tecum</i> ... ..	0	6	8	0	6	8
And if more than four folios, for each folio beyond four ... ..	0	1	4	0	1	4
Writ or writs of <i>subpœna ad testificandum</i> for any number of persons not exceeding three, and the same for every additional number not exceeding three ... ..	0	6	8	0	6	8
Writ of execution, or other writ to enforce any judgment or order ... ..	0	7	0	0	10	0
And, if more than four folios, for each folio beyond four ... ..	0	1	4	0	1	4
Procuring a writ of execution or notice to the sheriff, marked with a seal of renewal ... ..	0	6	8	0	6	8
Notice thereof to serve on sheriff ... ..	0	4	0	0	5	0
Any writ not included in the above ... ..	0	7	0	0	10	0
These fees include all indorsements and copies, or <i>præcipes</i> , for the officer sealing them, and attendances to issue or seal, but not the Court fees.						
Summons to attend at Judges' chambers ... ..	0	3	0	0	6	8
Or, if special, at taxing officer's discretion, not exceeding ... ..	0	6	8	1	1	0
Copy for the Judge, when required ... ..	0	2	0	0	2	0
Or per folio ... ..	—			0	0	4

## SERVICES, NOTICES, AND DEMANDS.

Service of any writ, summons, warrant, interrogatories, petition, order, notice, or demand on a party who has not entered an appearance, and if not authorised to be served by post ... ..	0	5	0	0	5	0
If served at a distance of more than two miles						

(a) For precedents of Bills of Costs, see post, Appendix VI.

SCALE OF COSTS.

	Lower Scale.			Higher Scale.			A.D. 1875.
	£	s.	d.	£	s.	d.	
from the nearest place of business or office of the solicitor serving the same, for each mile beyond such two miles therefrom ...	0	1	0	0	1	0	
Where, in consequence of the distance of the party to be served, it is proper to effect such service through an agent (other than the London agent), for correspondence, in addition ...	0	7	0	0	7	0	
Where more than one attendance is necessary to effect service, or to ground an application for substituted service, such further allowance may be made as the taxing officer shall think fit.							
For service out of the jurisdiction, such allowance is to be made as the taxing officer shall think fit.							
Service where an appearance has been entered on the solicitor or party ...	0	2	6	0	2	6	
Or, if authorised to be served by post ...	0	1	6	0	1	6	
Where any writ, order, and notice, or any two of them, have to be served together, one fee only for service is to be allowed.							
In addition to the above fees, the following allowances are to be made:—							
As to writs, if exceeding two folios, for copy for service, per folio beyond such two ...	0	0	4	0	0	4	
As to summons to attend at the Judges' chambers, for each copy to serve ...	0	1	0	0	2	0	
Or per folio ...	0	0	4	0	0	4	
For preparing or filling up for service in any other cause or matter, each notice to creditors to prove claims, and each notice that cheques may be received, specifying the amount to be received for principal and interest, and costs, if any ...	0	1	0	0	1	0	
For preparing notice to produce or admit, and one copy ...	0	5	0	0	7	6	
If special or necessarily long, such allowance as the taxing officer shall think proper, not exceeding per folio ...	0	0	8	0	1	4	
And for each copy beyond the first, such allowance as the taxing master shall think proper, not exceeding per folio ...	0	0	4	0	0	4	
For preparing notice of motion ...	0	2	0	0	5	0	
Or per folio ...	0	1	0	0	1	0	
Copy for service ...	0	1	0	0	1	0	
Or per folio ...	—			0	0	4	
For preparing any necessary or proper notice not otherwise provided for, and demand ...	0	1	6	0	1	6	
Or, if special, and necessarily exceeding three folios, for preparing same, for each folio beyond three ...	0	1	0	0	1	0	

A.D. 1875.

	Lower Scale.			Higher Scale.		
	£	s	d.	£	s	d.
And for each copy for service, per folio beyond such three ... ..	0	0	4	0	0	4
Copies for service of interrogatories and petitions, and of orders, with necessary notices (if any) to accompany, per folio ... ..	0	0	4	0	0	4
Except as otherwise provided, the allowances for service include copies for service.						
Where notice of filing affidavits is required, only one notice is to be allowed for a set of affidavits filed, or which ought to be filed together.						
Where any appointment is or ought to be adjourned, service of a notice of the adjournment, or next appointment, is not to be allowed.						

## APPEARANCES.

Entering any appearance... ..	0	6	8	0	6	8
If entered at one time for more than one person, for every defendant beyond the first	0	1	0	0	2	0

## INSTRUCTIONS.

To sue or defend ... ..	0	6	8	0	13	4
For statement of claim ... ..	0	13	4	2	2	0
For statement or further statement of defence	0	6	8	0	13	4
For counter-claim ... ..	0	6	8	0	13	4
For reply by plaintiff when defendant sets up a counter-claim ... ..	0	13	4	1	1	0
For reply or further reply in any other case by plaintiff or other person, with or without joinder of issue ... ..	0	6	8	0	13	4
For confession of defence... ..	0	6	8	0	13	4
For joinder of issue without other matter, and for demurrer ... ..	0	6	8	0	13	4
For special case, special petition, any other pleading (not being a summons), and interrogatories for examination of a party or witness ... ..	0	6	8	0	13	4
To amend any pleading ... ..	0	6	8	0	13	4
For affidavit in answer to interrogatories, and other special affidavits ... ..	0	6	8	0	6	8
To appeal ... ..	0	13	4	1	1	0
To add parties by order of Court or Judge ...	0	6	8	0	13	4
For counsel to advise on evidence when the evidence in chief is to be taken orally ...	0	6	8	0	6	8
Or not to exceed ... ..	0	13	4	1	1	0
For counsel to make any application to a Court or Judge where no other brief ...	0	6	8	0	10	0
For brief on motion for special injunction ...	0	13	4	1	1	0
For brief on hearing or trial of action upon notice of trial given, whether such trial be						

Lower Scale. Higher Scale. A.D. 1875.  
 £ s. d. £ s. d.

before a Judge or with or without a jury, or before an official or special referee, or on trial of an issue of fact before a Judge, commissioner, or referee, or on assessment of damages ... ..	1	1	0	2	2	0
For such brief, and for brief on the hearing of an appeal when witnesses are to be examined or cross-examined, such fee may be allowed as the taxing officer shall think fit, having regard to all the circumstances of the case, and to other allowances, if any, for attendances on witnesses and procuring evidence.						
The fees for instructions for brief are not to apply to a hearing on further consideration.						

DRAWING PLEADINGS AND OTHER DOCUMENTS.

Statement of claim ... ..	0	10	0	1	1	0
Or per folio ... ..	0	1	0	0	1	0
Statement of defence ... ..	0	5	0	0	10	0
Or per folio ... ..	0	1	0	0	1	0
Statement of defence and counter-claim ... ..	0	5	0	1	1	0
Or per folio ... ..	0	1	0	0	1	0
Reply with or without joinder of issue, confession of defence, joinder of issue without other matter, demurrer, and any other pleading (not being a petition or summons), and amendments of any pleading ... ..	0	5	0	0	10	0
Or per folio ... ..	0	1	0	0	1	0
Particulars, breaches, and objections, when required, and one copy to deliver ... ..	0	5	0	0	6	8
Or such amount as the taxing officer shall think fit, not exceeding per folio ... ..	0	0	8	0	1	0
If more than one copy to be delivered, for each other copy, per folio ... ..	0	0	4	0	0	4
Special case, whether original or in action, affidavits in answer to interrogatories, and other special affidavits, special petitions, and interrogatories, per folio ... ..	0	1	0	0	1	0
Brief on trial or hearing of cause, issue of fact, assessment of damages, examination of witnesses, demurrer, special case, and petition before a Court or Judge, sheriff, commissioner, referee, examiner, or officer of the Court, when necessary and proper, in addition to pleadings, including necessary and proper observations, per folio ... ..	0	1	0	0	1	0
Brief on application to add parties...	0	6	8	0	10	0

A.D. 1875.

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Or per folio ... ..	0	1	0	0	1	0
Brief on further consideration, per sheet of 10 folios ... ..	0	6	8	0	6	8
Accounts, statements, and other documents for the Judges' chambers, when required, and fair copy to leave, per folio ... ..	0	0	8	0	1	4
Advertisements to be signed by Judge's clerk, including attendance therefor ... ..	0	6	8	0	13	4
Bill of costs for taxation, including copy for the taxing officer ... ..	0	0	8	0	0	8

## COPIES.

Of pleadings, briefs, and other documents, where no other provision is made, at per folio ... ..	0	0	4	0	0	4
Where, pursuant to rules of Court, any pleading, special case or petition of right, or evidence, is printed, the solicitor of the party printing shall be allowed for a copy for the printer (except when made by the officer of the Court), at per folio ... ..	0	0	4	0	0	4
And for examining the proof print, at per folio... ..	0	0	2	0	0	2
And for printing, the amount actually and properly paid to the printer, not exceeding per folio ... ..	0	1	0	0	1	0
And in addition, for every 20 beyond the first 20 copies, at per folio ... ..	0	0	1	0	0	1
And where any part shall properly be printed in a foreign language, or as a fac-simile, or in any unusual or special manner, or where any alteration in the document being printed becomes necessary after the first proof, such further allowance shall be made as the taxing officer shall think reasonable.						
These allowances include all attendances on the printer.						
The solicitor for a party entitled to take printed copies shall be allowed, for such number of copies as he shall necessarily or properly take, the amount he shall pay for them.						
In addition to the allowances for printing and taking printed copies, there shall be allowed for such printed copies as may be necessary or proper for the following, but for no other purposes (videlicet) :—						
Of any pleading for delivery to the opposite party, or filing in default of appearance ... ..						
Of any special case, for filing ... ..						

SCALE OF COSTS.

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Lower Scale. Higher Scale. A.D. 1875.  
 £ s. d. £ s. d.

Of any pleading, special case, or petition of right, for the use of the Court or Judge ... ..					
Of any affidavit to be sworn to, in print ...					
And of any pleading, special case, petition of right, or evidence, for the use of counsel in Court, and in country agency causes when proper to be sent as a close copy for the use of the country solicitor, at per folio... ..	0	0	2	0	0
Such additional allowances for printed copies for the Court or Judge, and for counsel, are not to be made where written copies have been made previously to printing, and are not in any case to be made more than once in the progress of the cause.					
Close copies, whether printed or written, are not to be allowed as of course, but the allowance is to depend on the propriety of making or sending the copies, which in each case is to be shown and considered by the taxing officer.					
Inserting amendments in a printed copy of any pleading, special case, or petition of right, when not reprinted ... ..	0	1	0	0	5
Or per folio ... ..	0	0	4	0	0
* 45. Collating any copy, per folio (a) ... ..				0	0

PERUSALS.

Of statement of complaint, statement of defence, reply, joinder of issue, demurrer, and other pleading (not being a petition or summons), by the solicitor of the party to whom the same are delivered ... ..	0	6	8	0	13
Or per folio ... ..	—			0	0
Of amendment of any such pleading in writing ... ..	0	6	8	0	6
Or per folio ... ..	—			0	0
If same reprinted ... ..	0	6	8	0	13
Or per folio of amendment ... ..	—			0	0
Of interrogatories to be answered by a party by his solicitor ... ..	0	6	8	0	13
Or per folio ... ..	—			0	0
Of special case by the solicitor of any party except the one by whom it is prepared ...	0	6	8	0	13
Or per folio ... ..	—			0	0

(a) Items marked with an asterisk are those fees made in pursuance of 3 & 4 Vict. c. 85, s. 19, and 17 & 18 Vict. c. 98, and confirmed by the Order in Council 1859, which are still in force.

A.D. 1875.

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
On taxation of a bill of costs ... ..	0	6	8	0	6	8
Or according to circumstances not to exceed...	2	2	0	2	2	0
To obtain or give an undertaking to appear...	0	6	8	0	6	8
To present a special petition, and for same answered ... ..	0	6	8	0	6	8
On printer to insert advertisement in Gazette ... ..	0	6	8	0	6	8
On printer to insert same in other papers, each printer ... ..	—			0	6	8
Or every two ... ..	0	6	8	—		
On registrar to certify that a cause set down is settled, or for any reason not to come into the paper for hearing ... ..	0	6	8	0	6	8
NOTE.—An order of course means an order made on <i>ex parte</i> application, and to which a party is entitled as of right on his own statement and at his own risk.						
* 1. Attendance in the registry, filling up and leaving <i>precipe</i> ... ..				0	6	8
* 2. Subsequent attendance on obtaining the document or instrument for which the <i>precipe</i> was required, including the getting the seal of the Court affixed ... ..				0	6	8
* 3. Attendance in the registry, making payments ... ..				0	6	8
* 4. Attendance in the registry, filing notice of motion ... ..				0	6	8
* 6. Attendance in the marshal's office, filling up <i>precipe</i> , and leaving with him any instrument required to be served by him ... ..				0	6	8
* 15. Attendance at the office of a public journal, procuring the insertion of an advertisement ... ..				0	6	8
* 23. If required to go beyond three miles from the General Post Office to attend the examination of witnesses, the reasonable expenses of travelling, board and maintenance will be allowed in addition.						
* 24. Attendance before the registrar, or before the registrar and merchants, on a reference, according to the time occupied per day, from ... ..				1	1	0
				to		
				4	4	0
				1	1	0
* 25. If counsel attend the hearing of the reference, from ... ..				to		
				2	2	0
* 26. Where the accounts to be investigated do not exceed £300, a smaller fee shall be allowed at the discretion of the registrar.						
* 28. All other necessary attendances either before the Judge in chambers, before the registrar or a commissioner, or upon the adverse party or solicitor, and for which a fee has not been specially provided ... ..				0	6	8

SCALE OF COSTS.

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OATHS AND EXHIBITS.

A. D. 1875.

	Lower Scale.	Higher Scale.
	£ s. d.	£ s. d.
Commissioners to take oaths or affidavits, for every oath, declaration, or affirmation or attestation upon honour in London or the country ... ..	0 1 6	0 1 6
The solicitor for preparing each exhibit in town or country ... ..	0 1 0	0 1 0
The commissioner for marking each exhibit...	0 1 0	0 1 0

TERM FEES.

For every term commencing on the day the sittings in London and Middlesex of the High Court of Justice commence, and terminating on the day preceding the next such sittings, in which a proceeding in the cause or matter by or affecting the party, other than the issuing and serving the writ of summons, shall take place ... ..

	0 15 0	0 15 0
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And further, in country agency causes or matters, for letters ... ..

	0 6 0	0 6 0
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Where no proceeding in the cause or matter is taken which carries a term fee, a charge for letters may be allowed, if the circumstances require it.

In addition to the above an allowance is to be made for the necessary expense of postages, carriage and transmission of documents.

\* COUNSEL'S CLERKS' FEES.

Not to exceed as under :

	£	s.	d.
Upon a fee to counsel under 5 guineas ... ..	0	2	6
5 guineas and under 10 guineas ... ..	0	5	0
10 guineas and under 20 guineas ... ..	0	10	0
20 guineas and under 30 guineas ... ..	0	15	0
30 guineas and under 50 guineas ... ..	1	0	0
50 guineas and upwards, for every guinea paid ...	0	0	6
On consultations :			
Senior's clerk ... ..	0	7	6
Junior's clerk ... ..	0	2	6
On general retainer... ..	0	10	6
On common retainer ... ..	0	2	6
On conference ... ..	0	2	6

\* WITNESSES' EXPENSES.

Allowance to witnesses, including their board and lodging, as between party and party :

Common witnesses, as labourers, journeymen, sailors, &c., &c. :

If required to come a distance not exceeding five miles, per diem ... ..	0	5	0
If a greater distance, per diem ... ..	0	7	6



A.D. 1876.

	£	s	d
Master tradesmen, yeomen, farmers, masters and mates of vessels, &c. :			
If required to come a distance not exceeding five miles, per diem ... ..	0	10	0
If a greater distance, per diem ... ..	0	15	0
Bankers, merchants, professional men, notaries, engineers and surveyors, auctioneers, and accountants, &c., per diem, from ... ..	1	1	0
Clerks to bankers, merchants, professional men and others :	3	3	0
If required to come a distance not exceeding five miles, per diem ... ..	0	10	6
If a greater distance, per diem ... ..	1	1	0
Esquires and gentlemen, per diem ... ..	1	1	0
Females, according to station in life :			
If required to come a distance not exceeding five miles, per diem, from ... ..	0	5	0
to	0	10	0
If a greater distance, per diem, from ... ..	0	7	6
to	1	0	0

The travelling expenses of witnesses shall be allowed according to the sums reasonably and actually paid ; but in no case shall there be an allowance for such expenses of more than 1s. per mile one way.

#### SPECIAL ALLOWANCES AND GENERAL PROVISIONS.

1. As to writs of summons requiring special indorsement, original special cases, pleadings, and affidavits in answer to interrogatories, and other special affidavits, when the higher scale is applicable, the taxing officer may, in lieu of the allowances for instructions and preparing or drawing, make such allowance for work, labour, and expenses in or about the preparation of such documents as in his discretion he may think proper.

2. As to drawing any pleading or other document, the fees allowed shall include any copy made for the use of the solicitor, agent, or client, or for counsel to settle.

3. As to instructions to sue or defend, when the higher scale is applicable, if in consequence of the instructions being taken separately from more than three persons (not being co-partners) the taxing officer shall consider the fee above provided inadequate, he may make such further allowance as he shall in his discretion consider reasonable.

4. As to affidavits, when there are several deponents to be sworn, or it is necessary for the purpose of an affidavit being sworn to go to a distance, or to employ an agent, such reasonable allowance may be made as the taxing officer in his discretion may think fit.

5. The allowances for instructions and drawing an affidavit in answer to interrogatories and other special affidavits, and attending

the deponent to be sworn, include all attendances on the deponents A.D. 1875.  
to settle and read over.

6. As to delivery of pleadings, services, and notices, the fees are not to be allowed when the same solicitor is for both parties, unless it be necessary for the purpose of making an affidavit of service.

7. As to perusals the fees are not to apply where the same solicitor is for both parties.

8. As to evidence, such just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence, and the attendance of witnesses, are to be allowed.

9. As to agency correspondence, in country agency causes and matters, if it be shown to the satisfaction of the taxing officer that such correspondence has been special and extensive, he is at liberty to make such special allowance in respect thereof as in his discretion he may think proper.

10. As to attendances at the Judges' chambers, where, from the length of the attendance, or from the difficulty of the case, the Judge or master shall think the highest of the above fees an insufficient remuneration for the services performed, or where the preparation of the case or matter to lay it before the Judge or master in chambers, or on a summons, shall have required skill and labour for which no fee has been allowed, the Judge or master may allow such fee in lieu of the fee of £1 1s. above provided, not exceeding £2 2s., or where the higher scale is applicable £3 3s., or in proceedings to wind up a company £5 5s., as in his discretion he may think fit; and, where the preparation of the case or matter to lay it before a Judge at chambers on a summons shall have required and received from the solicitor such extraordinary skill and labour as materially to conduce to the satisfactory and speedy disposal of the business, and therefore shall appear to the Judge to deserve higher remuneration than the ordinary fees, the Judge may allow to the solicitor, by a memorandum in writing expressly made for that purpose, and signed by the Judge, specifying distinctly the grounds of such allowance, such fee, not exceeding 10 guineas, as in his discretion he may think fit, instead of the above fees of £2 2s., £3 3s., and £5 5s.

11. As to attendances at the Judges' chambers, where by reason of the non-attendance of any party (and it is not considered expedient to proceed *ex parte*), or where by reason of the neglect of any party in not being prepared with any proper evidence, account, or other proceeding, the attendance is adjourned without any useful progress being made, the Judge may order such an amount of costs (if any) as he shall think reasonable to be paid to the party attending by the party so absent or neglectful, or by his solicitor personally; and the party so absent or neglectful is not to be allowed any fee as against any other party, or any estate or fund in which any other party is interested.

12. A folio is to comprise 72 words, every figure comprised in a column being counted as one word.

13. Such costs of procuring the advice of counsel on the pleadings, evidence, and proceedings in any cause or matter as the taxing officer shall in his discretion think just and reasonable, and of procuring counsel to settle such pleadings and special affidavits as the taxing officer shall in his discretion think proper to be settled by counsel,

**A.D. 1875.** are to be allowed ; but, as to affidavits, a separate fee is not to be allowed for each affidavit, but one fee for all the affidavits proper to be so settled, which are or ought to be filed at the same time.

14. As to counsel attending at Judges' chambers, no costs thereof shall in any case be allowed, unless the Judge certifies it to be a proper case for counsel to attend.

15. As to the inspection of documents under Order XXXI, Rule 14, no allowance is to be made for any notice or inspection, unless it is shown to the satisfaction of the taxing officer that there were good and sufficient reasons for giving such notice and making such inspection.

16. As to taking copies of documents in possession of another party, or extracts therefrom, under rules of Court or any special order, the party entitled to take the copy or extract is to pay the solicitor of the party producing the document for such copy or extract as he may by writing require, at the rate of 4*d.* per folio ; and, if the solicitor of the party producing the document refuses or neglects to supply the same, the solicitor requiring the copy or extract is to be at liberty to make it, and the solicitor for the party producing is not to be entitled to any fee in respect thereof.

18. The Court or Judge may, at the hearing of any cause or matter, or upon any application or procedure in any cause or matter in Court or at chambers, and whether the same is objected to or not, direct the costs of any pleading, affidavit, evidence, notice to cross-examine witnesses, account, statement, or other proceeding, or any part thereof, which is improper, unnecessary, or contains unnecessary matter, or is of unnecessary length, to be disallowed, or may direct the taxing officer to look into the same and to disallow the costs thereof, or of such part thereof as he shall find to be improper, unnecessary, or to contain unnecessary matter, or to be of unnecessary length ; and in such case the party whose costs are so disallowed shall pay the costs occasioned to the other parties by such unnecessary proceeding, matter, or length ; and in any case where such question shall not have been raised before and dealt with by the Court or Judge, the taxing officer may look into the same (and, as to evidence, although the same may be entered as read in any decree or order) for the purpose aforesaid, and thereupon the same consequences shall ensue as if he had been specially directed to do so.

19. In any case in which, under the preceding Rule No. 18, or any other rule of Court, or by the order or direction of a Court or Judge, or otherwise, a party entitled to receive costs is liable to pay costs to any other party, the taxing officer may tax the costs such party is so liable to pay, and may adjust the same by way of deduction or set-off, or may, if he shall think fit, delay the allowance of the costs such party is entitled to receive until he has paid or tendered the costs he is liable to pay ; or such officer may allow or certify the costs to be paid, and the same may be recovered by the party entitled thereto in the same manner as costs ordered to be paid may be recovered.

21. Where any party appears upon any application or proceeding in Court or at chambers, in which he is not interested, or upon which according to the practice of the Court he ought not to attend, he is not to be allowed any costs of such appearance, unless the Court or Judge shall expressly direct such costs to be allowed.

Rule 22 in the schedule to the Additional Rules of the Supreme A.D. 1876. Court is hereby annulled.

The costs of an application to extend the time for taking any proceeding shall, in the absence of an order by the Court or a Judge directing by whom they are to be paid, be in the discretion of the taxing master. (Rules of April, 1880.)

23. The taxing officers of the Supreme Court, or of any division thereof, shall, for the purpose of any proceeding before them, have power and authority to administer oaths, and shall, in relation to the taxation of costs, perform all such duties as have heretofore been performed by any of the masters, taxing masters, registrars, or other officers of any of the Courts whose jurisdiction is by the Act transferred to the High Court of Justice or Court of Appeal, and shall, in respect thereof, have such powers and authorities as previous to the commencement of the Act were vested in any of such officers, including examining witnesses, directing production of books, papers, and documents, making separate certificates or allocaturs, requiring any party to be represented by a separate solicitor, and to direct and adopt all such other proceedings as could be directed or adopted by any such officer on references for the taxation of costs, and taking accounts of what is due in respect of such costs, and such other accounts connected therewith as may be directed by the Court or a Judge.

24. The taxing officer shall have authority to arrange and direct what parties are to attend before him on the taxation of costs to be borne by a fund or estate, and to disallow the costs of any party whose attendance such officer shall in his discretion consider unnecessary in consequence of the interest of such party in such fund or estate being small or remote or sufficiently protected by other parties interested.

25. When any party entitled to costs refuses or neglects to bring in his costs for taxation, or to procure the same to be taxed, and thereby prejudices any other party, the taxing officer shall be at liberty to certify the costs of the other parties, and certify such refusal or neglect, or may allow such party refusing or neglecting a nominal or other sum for such costs, so as to prevent any other party being prejudiced by such refusal or neglect.

26. As to costs to be paid or borne by another party, no costs are to be allowed which do not appear to the taxing officer to have been necessary or proper for the attainment of justice or defending the rights of the party, or which appear to the taxing officer to have been incurred through over-caution, negligence, or mistake, or merely at the desire of the party.

27. As to any work and labour properly performed and not herein provided for, and in respect of which fees have heretofore been allowed, the same or similar fees are to be allowed for such work and labour as have heretofore been allowed.

28. The rules, orders, and practice of any Court whose jurisdiction is transferred to the High Court of Justice or Court of Appeal, relating to costs, and the allowance of the fees of solicitors and attorneys, and the taxation of costs, existing prior to the commencement of the Act, shall, in so far as they are not inconsistent with the Act, and the rules of Court in pursuance thereof, remain in

A.D. 1875. force, and be applicable to costs of the same or analogous proceedings, and to the allowance of the fees of solicitors of the Supreme Court and the taxation of costs in the High Court of Justice and Court of Appeal.

29. As to all fees or allowances which are discretionary, the same are, unless otherwise provided, to be allowed at the discretion of the taxing officer, who, in the exercise of such discretion, is to take into consideration the other fees and allowances to the solicitor and counsel, if any, in respect of the work to which any such allowance applies, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the fund or persons to bear the costs, the general conduct and costs of the proceedings, and all other circumstances.

30. Any party who may be dissatisfied with the allowance or disallowance by any taxing officer, in any bill of costs taxed by him, of the whole or any part of any item or items, may, at any time before the certificate or allocatur is signed, deliver to the other party interested therein, and carry in before the taxing officer, an objection in writing to such allowance or disallowance, specifying therein by a list, in a short and concise form, the item or items, or parts or part thereof, objected to, and may thereupon apply to the taxing officer to review the taxation in respect of the same.

31. Upon such application the taxing officer shall re-consider and review his taxation upon such objections, and he may, if he shall think fit, receive further evidence in respect thereof, and, if so required by either party, he shall state either in his certificate of taxation or allocatur, or by reference to such objection, the grounds and reasons of his decision thereon, and any special facts or circumstances relating thereto.

32. Any party who may be dissatisfied with the certificate or allocatur of the taxing officer as to any item or part of an item which may have been objected to as aforesaid, may apply to a Judge at chambers for an order to review the taxation as to the same item or part of an item, and the Judge may thereupon make such order as to the Judge may seem just; but the certificate or allocatur of the taxing officer shall be final and conclusive as to all matters which shall not have been objected to in manner aforesaid.

33. Such application shall be heard and determined by the Judge upon the evidence which shall have been brought in before the taxing officer, and no further evidence shall be received upon the hearing thereof, unless the Judge shall otherwise direct.

34. When a writ of summons for the commencement of an action shall be issued from a district, and when an action proceeds in a district registry, all fees and allowances, and rules and directions relating to costs, which would be applicable to such proceeding if the writ of summons were issued in London, and if the action proceeded in London, shall apply to such writ of summons issued from and other proceedings in the district registry.

## PART II.

A.D. 1875.

## FEES.

ORDER AS TO COURT FEES UNDER THE SUPREME  
COURT OF JUDICATURE ACT, 1875.

[28th October, 1875.]

The Right Honorable Hugh MacCalmont Baron Cairns, Lord High Chancellor of Great Britain, by and with the advice and consent of the undersigned Judges of the Supreme Court, and with the concurrence of the Lords Commissioners of her Majesty's Treasury, doth hereby in pursuance and execution of the powers given by the Supreme Court of Judicature Act, 1875, and all other powers and authorities enabling him in this behalf, order and direct in manner following :—

## I.

The fees and percentages contained in the schedule hereto are fixed and appointed to be and shall be taken in the High Court of Justice, and in the Court of Appeal, and in any Court to be created by any commission, and in any office which is connected with any of those Courts, or in which any business connected with any of those Courts is conducted, and by any officer paid wholly or partly out of public moneys who is attached to any of those Courts or the Supreme Court, or any Judge of those Courts, or any of them ; and the said fees and percentages shall be taken by stamps, except those taken in the district registries, which shall, until further order, be taken in money, and applied and accounted for in such manner as the Treasury may from time to time direct.

## II.

The fees and percentages set forth in the column headed Lower Scale in the schedule hereto are to be taken and paid in all cases in which the Lower Scale of fees is to be charged and allowed to solicitors under the provisions of the Additional Rules of Court under the Supreme Court of Judicature Act, 1875, issued by Order in Council, dated the 12th day of August, 1875, and the fees and percentages set forth in the column headed Higher Scale in the schedule hereto are to be taken and paid in all other cases.

## IV.

The provisions in this order shall not apply to or affect any of the matters following (that is to say) :—

The existing fees and percentages in respect of any matter at the time of the passing of the Supreme Court of Judicature Act, 1875, within the jurisdiction of the Court of Probate, the Court for Divorce and Matrimonial Causes, or the Admiralty

A.D. 1875.

Court, or relating to any appeal from the Chief Judge in Bankruptcy, except so far as the procedure in any such matter, or the fees or percentages to be taken in respect thereof, is or are expressly varied by the schedule to the said Act, or by this order, or by any rules of Court made or to be made by Order in Council before the commencement of the said Act;

The existing fees and percentages directed to be taken or paid by any Act of Parliament, and in respect of which no fee or percentage is hereby provided.

V.

The existing rules and practice, applicable to proceedings by persons suing in formâ pauperis, shall continue and be applicable to proceedings to which this order relates.

VI.

Save as otherwise provided by this order, all existing fees and percentages which may be taken in any of the Courts whose jurisdiction is, by the Judicature Acts, 1873 and 1875, transferred to the High Court of Justice or Court of Appeal, or in any office which is connected with any of those Courts, or in which any business connected with any of those Courts is conducted, or by any officer paid wholly or partly out of public moneys who is attached to any of those Courts, or the Supreme Court, or any Judge of those Courts, or any of them, shall be and are hereby abolished.

VII.

A folio is to comprise 72 words, every figure comprised in a column being counted as one word.

VIII.

The provisions of Order LXIII. in the first schedule to the Supreme Court of Judicature Act, 1875, shall apply to this order.

IX.

This order shall come into operation at the time of the commencement of the Supreme Court of Judicature Acts, 1873 and 1875.

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*Form of Certificate for paying Lower Scale of Court Fees above referred to.*

(Title of cause or matter.)

I hereby certify that to the best of my judgment and belief the Lower Scale of Fees of Court is applicable to this case.

Dated, &c.

A. B.,  
Solicitor for Plaintiff or Defendant.

THE SCHEDULE ABOVE REFERRED TO.

A.D. 1875.

An Order or Rule herein referred to by number shall mean the Order or Rule so numbered in the First Schedule to the Supreme Court of Judicature Act, 1875.

SUMMONSES, WRITS, COMMISSIONS, AND WARRANTS.

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
On sealing a writ of summons for commencement of an action ... ..	0	5	0	0	10	0
On sealing a concurrent, renewed, or amended writ of summons for commencement of an action ... ..	0	2	6	0	2	6
On sealing a notice for service under Order XVI., Rule 18 ... ..	0	2	6	0	2	6
On sealing a writ of subpoena not exceeding three persons ... ..	0	2	6	0	5	0
On sealing every other writ ... ..	0	5	0	0	10	0
On sealing or issuing any other summons or warrant ... ..	0	2	0	0	3	0
On sealing or issuing a commission to take oaths or affidavits in the Supreme Court ... ..	5	0	0	5	0	0
Every other commission ... ..	1	0	0	1	0	0
*On every præcipe (a) ... ..		0	5	0		
*2. On every warrant or citation ... ..		0	10	0		
*3. On every detainer ... ..		1	0	0		
*4. On every release ... ..		0	10	0		
*5. On every commission, monition, decree, requisition, attachment, or other instrument for which a fee is not specially provided ... ..		1	0	0		

APPEARANCES.

On entering an appearance, for each person ...	0	2	0	0	2	0
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COPIES.

For a copy of a written deposition of a witness to enable a printer to print the same, for each folio ... ..	0	0	4	0	0	4
For examining a written or printed copy, and marking same as an office copy, for each folio ... ..	0	0	2	0	0	2
For making a copy and marking same as an office copy, for each folio ... ..	0	0	6	0	0	6

(a) The fees marked with an asterisk are those made in pursuance of 3 & 4 Vict. c. 65, s. 19, and 17 & 18 Vict. c. 78, confirmed by Order in Council, 29th November, 1859, so far as they are still in force.



A. D. 1875.

	Lower Scale.			Higher Scale.		
	£	s	d.	£	s	d.
For a copy in a foreign language, the actual cost.						
For a copy of a plan, map, section, drawing, photograph, or diagram, the actual cost.						
For a printed copy of an order, not being an office or certified copy, for each folio ...	0	0	1	0	0	1
*23. For every office copy of a document in the English language, per sheet not exceeding 10 folios, including the registrar's signature ...		0	5	0		
*24. If required to be collated in the registry, per sheet not exceeding 10 folios, in addition to the above ...		0	2	6		
*25. For office copies of papers in a foreign language, or of shorthand writers' or reporters' notes, or of abstracts or translations made in the registry, in addition to the above fees, the charges of the copyist, shorthand writer, reporter, or translator.						

## ATTENDANCES.

On an application, with or without a subpoena, for any officer to attend as a witness or to produce any record or document to be given in evidence (in addition to the reasonable expenses of the officer) for each day or part of a day he shall necessarily be absent from his office ...	1	0	0	1	0	0
The officer may require a deposit of stamps on account of any further fees, and a deposit of money on account of any further expenses which may probably become payable beyond the amount paid for fees and expenses on the application, and the officer or his clerk taking such deposit shall thereupon make a memorandum thereof on the application.						
The officer may also require an undertaking in writing to pay any further fees and expenses which may become payable beyond the amount so paid and deposited.						

## OATHS, &amp;c.

For taxing an affidavit or an affirmation or attestation upon honour in lieu of an affidavit or a declaration, except for the purpose of receipt of dividends from the paymaster-general, for each person making the same ...	0	1	6	0	1	6
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COURT FEES.

379

	Lower Scale.	Higher Scale.	A.D. 1875.
	£ s. d.	£ s. d.	£ s. d.
And in addition thereto for each exhibit therein referred to and required to be marked, whether annexed or not ...	0 1 0	0 1 0	
*18. On administering an oath, for each deponent ...		0 1 0	

FILING.

On filing an affidavit with exhibits (if any) annexed, submission to arbitration, award, bill of sale, warrant of attorney, cognovit, bail, satisfaction piece, and writ of execution with return ...	0 2 0	0 2 0	
On filing a caveat ...	0 5 0	0 5 0	

CERTIFICATES.

For a certificate of appearance, or of a pleading, affidavit, or proceeding having been entered, filed, or taken, or of the negative thereof ...	0 1 0	0 4 0	
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SEARCHES AND INSPECTIONS.

On an application to search for an appearance or an affidavit, and inspecting the same ...	0 1 0	0 1 0	
On an application to search an index, and inspect a pleading, decree, order or other record, unless otherwise expressly provided for by any Act of Parliament or this Order, and to inspect documents deposited for safe custody, or production pursuant to an order, for each hour or part of an hour occupied ...	0 2 6	0 2 6	
Not exceeding one day ...	0 10 0	0 10 0	

EXAMINATION OF WITNESSES.

For every witness sworn and examined by an examiner or other officer in his office, including oath, for each hour ...	0 10 0	0 10 0	
For an examination of witnesses by any such officer away from the office (in addition to reasonable travelling and other expenses), per day ...	3 0 0	3 0 0	
The officer may require a deposit of stamps on account of fees and a deposit of money on account of expenses which may probably become payable beyond any amount paid for fees and expenses upon the examination, and the officer or his clerk taking such			

A.D. 1875.

	Lower Scale.	Higher Scale.	
	£	s.	d.
deposit shall thereupon make a memorandum thereof and deliver the same to the party making the deposit.			
The officer may also require an undertaking in writing to pay any further fees and expenses which may become payable beyond the amount so paid and deposited.			
These fees are not to apply to the examination of witnesses for the purpose of any inquiry, taxation of costs, or other proceeding before the officer.			
* 17. On the examination of any witness <i>videlicet</i> either in Court or before the registrar ... ..		0	10 0
For entering or setting down, or re-entering or re-setting down an appeal to the Court of Appeal, or a cause for trial or hearing in any Court in London or Middlesex, or at any assizes, including a demurrer, special case, and petition of right, but not any other petition, nor a summons adjourned from chambers ... ..	2	0	0 2 0 0
For a certificate of an associate of the result of trial ... ..	1	0	0 1 0 0

## JUDGMENTS, DECREES, AND ORDERS.

For drawing up and entering a judgment, or a decree or decretal order, whether on the original hearing of a cause or on further consideration, including a cause commenced by summons at chambers, and an order on the hearing of a special case or petition, and any order by the Court of Appeal ...	0	10	0 1 0 0
For drawing up and entering any other order, whether made in court or at chambers ...	0	3	0 0 5 0
For copy of a plan, map, section, drawing, photograph, or diagram, required to accompany any order, the actual cost.			

## TAKING ACCOUNTS.

On taking an account of a receiver, guardian, consignee, bailee, manager, provisional, official, or voluntary liquidator, or sequestrator, or of an executor, administrator, trustee, agent, solicitor, mortgagee, co-tenant, co-partner, execution creditor, or other person liable to account, when the amount found to have been received without deducting any payment shall not exceed £200 ... ..	0	2	0 0 2 0
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	Lower Scale.	Higher Scale.	A.D. 1875.
	£ s. d.	£ s. d.	— — —
Where such amount shall exceed £200, for every £50 or fraction of £50 ...	0 0 6	0 0 6	
In the case of any such receiver, guardian, consignee, bailee, manager, liquidator, sequestrator, or execution creditor, the fees shall, upon payment, be allowed in the account unless the Court or Judge shall otherwise direct, and in the case of taking the accounts of such other accounting parties the fees shall be paid by the party having the conduct of the order under which such account is taken, as part of his costs of the cause or matter (unless the Court or Judge shall otherwise direct), and in such case shall be taken upon the certificate of the result of any such account; but the fees shall be due and payable, although no certificate is required, on the account taken, or on such part thereof as may be taken, and the solicitor or party suing in person shall in such case cause the proper stamps (the amount thereof to be fixed by the officer) to be impressed on or affixed to the account.			

The officer taking the account may require a deposit of stamps on account of fees before taking the account, not exceeding the fees on the full amount appearing by the account to have been received, and the officer or his clerk taking such deposit shall make a memorandum thereof on the account.

TAXATION OF COSTS.

For taxing a bill of costs where the amount allowed does not exceed £8 ...	0 2 0	0 4 0	
Where the amount allowed exceeds £8, for every £2 allowed, or a fraction thereof ...	0 0 6	0 1 0	
These fees, except where otherwise provided, shall be taken on signing the certificate or on the allowance of the bill of costs as taxed, but the fees shall be due and payable if no certificate or allocatur is required on the amount of the bill as taxed, or on the amount of such part thereof as may be taxed, and the solicitor or party suing in person shall in such case cause the proper stamps (the amount thereof to be fixed by the officer) to be impressed on or affixed to the bill of costs.			

A.D. 1875.

	Lower Scale.	Higher Scale.
	£ s. d.	£ s. d.
The taxing officer may require a deposit of stamps on account of fees before taxation not exceeding the fees on the full amount of the costs as submitted for taxation, and the officer or his clerk on taking such deposit shall make a memorandum thereof on the bill of costs.		
For a certificate or allocatur of the result, not being a judgment ... ..	—	1 0 0

## PETITIONS.

For answering a petition for hearing in Court, and setting down ... ..	0 5 0	1 0 0
For answering a non-attendable petition, not being a petition for an order of course ...	0 5 0	0 10 0
On a matter of course order, on a petition of right ... ..	0 10 0	0 10 0
On an order for a commission on a petition of right ... ..	1 0 0	1 0 0

## REGISTER OF JUDGMENTS AND LIS PENDENS.

For registering a judgment or lis pendens, although more than one name may have to be registered ... ..	0 2 6	0 2 6
For re-registering same ... ..	0 1 0	0 1 0
For a search for each name ... ..	0 1 0	0 1 0
For a certificate of entry of satisfaction ...	0 1 0	0 1 0
For certificate of a judgment for registration in Ireland or Scotland under the Judgments Extension Act, 1868, including affidavit ...	0 2 0	0 2 0
On filing for registration a certificate issued out of Courts of Dublin or Court of Session in Scotland under the same Act, although more than one name may have to be registered under the same Act ... ..	0 7 0	0 7 0
On every certificate of the entry of satisfaction under the same Act ... ..	0 1 0	0 1 0
For a search made in one or both of the registers of Irish and Scotch judgments, for each name ... ..	0 1 0	0 1 0

## MISCELLANEOUS.

On an allowance of bye-laws or table of fees	1 0 0	1 0 0
On a fiat of a Judge ... ..	0 5 0	0 5 0
On signing an advertisement ... ..	—	1 0 0
Upon a reference to a Master of the Queen's Bench, Common Pleas, or Exchequer Divisions, or a District Registrar, for the purpose of any investigation or inquiry other		

COURT FEES.

	Lower Scale.	Higher Scale.	A.D. 1875.
	£ s. d.	£ s. d.	_____
than the taking of an account for which another fee is herein provided, for every hour or part of an hour the Master or Registrar is occupied ... ..	0 10 0	0 10 0	
A deposit on account of fees before proceeding with such reference, or at any time during the course thereof, may be required, and a memorandum thereof, shall be delivered to the party making the deposit.			
On taking acknowledgment of a deed by a married woman ... ..	1 0 0	1 0 0	
On taking a recognizance or bond ... ..	0 10 0	0 10 0	
On taking bail, and taking same off the file and delivering ... ..	0 2 0	0 2 0	
On a commitment ... ..	0 5 0	0 5 0	
On an application to produce Judge's notes ...	0 5 0	0 5 0	
On examining and signing enrolments of decrees and orders ... ..	3 0 0	3 0 0	

CAIRNS, C.  
 G. JESSEL.  
 COLERIDGE.  
 FITZROY KELLY.  
 W. M. JAMES.  
 GEORGE MELLISH.  
 G. BRAMWELL.  
 NATHANIEL LINDLEY.

We certify that this Order is made with the concurrence of the Commissioners of Her Majesty's Treasury.

MAHON.  
 ROW. WINN.

	£	s.	d.
* 28. On a reference to the registrar ...	5	5	0
* 29. If the attendance of one or two merchants is required, to each merchant ...	5	5	0
* 30. In cases of great intricacy and large amount, to the registrar and to each merchant	10	10	0
* 31. When the accounts to be investigated do not amount to £300, to the registrar and to each merchant, from ... ..	2	2	0
* 32. When the accounts to be investigated do not amount to £100, to the registrar and to each merchant, from ... ..	5	5	0
	1	1	0
	3	3	0
* 33. On drawing the report and schedule in cases in which the claim exceeds £100 ...	1	0	0
* 34. On drawing the report and schedule where the claim does not exceed £100 ..	0	10	0
* 36. On taxing any bill of costs, per sheet not exceeding 10 folios, if but one party attends the taxation ... ..	0	10	0
* 37. On a receivable order ... ..	0	2	6

A.D. 1875.	£	s	d
* 38. On a receipt for money or for papers ...	0	2	6
* 39. On every order for payment of money out of the registry ...	0	5	0
* 40. Poundage on moneys paid out of the registry in any cause, if the sum does not exceed £50 ...	0	5	0
* 41. Poundage on moneys paid out of the registry in any cause, if it exceeds £50, but does not exceed £100 ...	0	10	0
* 42. Poundage on moneys paid out of the registry in any cause, if it exceeds £100, but does not exceed £200 ...	1	0	0
* 43. For every additional £100 ...	0	10	0
* 44. No poundage is payable on the transfer of money from the registry to the naval prize account, or on transmitting it to the Court of Appeal in pursuance of a monition.			
* 48. Attendance at the Bank to receive dividends, transfer, sell, or purchase stock or exchequer bills, or convert bills of exchange for suitors ...	1	0	0
* 52. On filing a claim for repayment of the excess of wages paid to a substitute hired in the place of a volunteer into the royal navy, including copy sent to the Admiralty	0	10	0
* 53. On the opinion of the registrar objecting to the claim ...	0	10	0
* 54. On certificate ordering payment of amount due, including the copy to be sent to the accountant-general of the navy ...	0	10	0
* 55. On registering power of attorney for a Queen's ship generally, and copy thereof for Somerset House ...	1	10	0
* 56. On registering ditto specially ...	0	10	0
* 57. Poundage on moneys paid to the naval prize account, the same as on payment of moneys out of the registry in causes.			
* 58. On taxing accounts in naval prize matters, the same as on taxing bills in causes.			
* 59. On writing letters in regard to naval prize matters ...	0	10	0
* 60. On letters patent to a Vice-Admiral, or Judge of a Vice-Admiralty Court, issued under seal of the Court, besides the stamp duty, if any ...	5	0	0
* 61. On letters patent to an advocate, registrar, or marshal of a Vice-Admiralty Court, besides the stamp duty, if any ...	2	10	0
* 62. On every appointment of a coroner ...	2	0	0
* 6. On every bail bond ...	0	7	6
* 7. On every affidavit of justification ...	0	2	6

SCALE OF FEES.

385

	£	s.	d.	A.D. 1875.
* 11. On every notice of sale or notice of a proceeding in an action of possession ...	0	10	0	
* 12. On every notice of motion including the entry of the judge's order ...	0	10	0	
* 15. On every notice to have a reference placed on the bill for hearing ...	0	10	0	
* 16. On every writing for the attendance of Trinity masters at the hearing of any cause	0	10	0	
* 21. On every proof, notice, agreement, or other document, on the same being filed, save an exhibit or other document previously issued from the registry or the marshal's office ...	0	5	0	
* 22. Exhibit, including the marking thereof	0	1	0	

IN THE MARSHAL'S OFFICE.

* 64. On the execution of every warrant ...	2	0	0	
* 65. On the execution of every citation <i>in rem</i>	0	10	0	
* 66. On the execution of every attachment, for every person attached ...	1	0	0	
* 67. On the execution of every decree or commission of unlivery, appraisement, or sale ...	1	0	0	
* 68. On the execution of any other instrument for which a fee is not specially provided ...	1	0	0	
* 69. On attending, appointing, and swearing appraisers ...	1	0	0	
* 70. On delivering up ship or goods to the purchaser agreeably to the inventory ...	1	0	0	
* 71. On attending the unlivery of the cargo or sale of ship or goods, per day ...	2	0	0	
* 72. On retaining possession of a ship or of a ship and goods, to include the cost of a shipkeeper, if required, per day ...	0	5	0	
* 72a. On attending the removal of a ship, per day ...	2	0	0	
* 73. On every report as to the sufficiency of sureties ...	0	10	0	
* 74. If the marshal or any of his substitutes is required to go a greater distance than five miles from his office to perform any of the above duties, he will be entitled to his reasonable expenses for travelling, board, and maintenance.				
* 75. Poundage on the proceeds of any vessel or goods sold under the decree of the Court, if the same do not exceed 50 <i>l.</i>				
* 76. Exceeding 50 <i>l.</i> but not exceeding 100 <i>l.</i>	1	0	0	
* 77. For every additional 100 <i>l.</i> , or part thereof ...	1	0	0	

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A.D. 1875.

## PART III.

## ORDER AS TO THE TAKING OF THE FEES AND PERCENTAGES IN THE SUPREME COURT OF JUDICATURE BY STAMPS, EXCEPT IN THE DISTRICT REGISTRIES (a).

[28th October, 1875.]

Stamps.

WHEREAS, by Section 26 of the Supreme Court of Judicature Act, 1875, it is provided that the fees and percentages appointed to be taken in the High Court of Justice and in the Court of Appeal, and in any Court to be created by any commission, and in any office which is connected with any of those Courts or in which any business connected with any of those Courts is conducted, shall, except so far as they be otherwise directed, be taken by means of stamps; and further, that such stamps shall be impressed or adhesive, as the Treasury may from time to time direct; and that the Treasury, with the concurrence of the Lord Chancellor, may from time to time make such rules as may seem fit for publishing the amount of the fees and regulating the use of such stamps, and particularly for prescribing the application thereof to documents from time to time in use or required to be used for the purposes of such stamps, and for insuring the proper cancellation of such stamps.

Now, we, the undersigned, being two of the Lords Commissioners of Her Majesty's Treasury, do, with the concurrence of the Lord Chancellor, hereby give notice and order and direct—

1. That from and after the 1st November next, being the date fixed for the commencement of this Act, all orders and regulations now in force with respect to the use, proper cancellation, mode of keeping accounts, and allowance of fee stamps in—

The Admiralty Court, shall continue in force up to the beginning of the sittings to take place after January next, or they shall respectively be altered or annulled by any rules hereafter to be made and published in conformity with the Act.

2. That the stamps to be used in the collection of fees and percentages payable under the order made in pursuance of the powers given by the Supreme Court of Judicature Act, 1875, bearing date this day, shall, until further notice, be either impressed or adhesive as directed in any previous order; and, in cases to which no previous order is applicable, shall be either impressed or adhesive, at the option of the parties by whom the fees are payable.

3. That, until we do order to the contrary, the dies heretofore in use for impressing stamps in any of the Courts affected by the said Act, and also the adhesive stamps heretofore in use, shall be available and valid for the taking of the said fees and percentages, and may be used notwithstanding that new dies and stamps appropriated to the Supreme Court of Judicature may in the meantime have been issued by the Commissioners of Inland Revenue, which will also be valid and available.

(a) By order of October 24, 1877, fees are to be taken by stamps in the District Registries of Liverpool and Manchester, except in respect of proceeds of a sale of a ship by order of the Admiralty Division.

5. And, that where any of such fees are payable in respect of any A.D 1875. matter or thing to be done by any officer or in any office whatever of the Supreme Court of Judicature, and it shall not have been customary or may not be necessary to use any written or printed document or paper in reference to such matter or thing whereon the stamp could be stamped or affixed, the party or his solicitor requiring such matter or thing to be done shall make application for the same by a *præcipe*, or short note in writing or print, and a stamp denoting the amount of the fees so payable shall be stamped or affixed to such *præcipe* or note.

6. That, where a fee is payable, but no directions are found in previous orders as to the document to which the stamp is to be applied, it shall be lawful, until we do otherwise order, for any officer of the Supreme Court whose duty it would be to see that the fee in question is duly paid by means of a stamp, to decide on what document such stamp shall be impressed or affixed.

Given under our hands,  
 MAHON.  
 Row. WINN.

I hereby signify my concurrence in the before-mentioned rules and regulations.

CAIRNS, C.

PART IV.

FEEES AND COSTS IN SALVAGE CASES HEARD IN A SUMMARY MANNER.

SCALE OF FEEES AND COSTS ALLOWED IN PURSUANCE OF 25 & 26 VICT. c. 63, s. 69.

*Fees to Assessors and Umpires.*

	£	s.	d.
To assessors, for each day's attendance and service in every case in which his assistance shall have been duly required ... ..	1	1	0
To an umpire, when duly appointed by justices under sect. 461 of 17 & 18 Vict. c. 104, for his service as such, for each day's employment ... ..	1	1	0
Provided the total sum allowed to such assessor and umpire respectively shall in no case exceed the sum stated in sect. 462 of 17 & 18 Vict. c. 104.			

*Fees to be paid to the Clerks of Justices or Stipendiary Magistrates in England or Wales.*

And, if the above cases be heard by the judge of a County Court in England, a sheriff or his substitute in Scotland, or the recorder of a borough, or chairman of quarter sessions in Ireland, to be paid to the registrar or clerk of such Court or to any other person acting in a like capacity.

	£	s	d
<u>A.D. 1875.</u> Convening justices and assessors and umpire to hear a case of salvage, for each person convened ... ..	0	2	0
Notices to parties to the inquiry, of time of hearing a case ... ..	0	2	0
Summons and duplicate to each witness, if required ... ..	0	2	0
To person serving a notice of summons ... ..	0	1	0
Taking written examination of witnesses, per folio ... ..	0	0	8
Copy of such evidence (if required), per folio ... ..	0	0	2
Preparing award, per folio ... ..	0	0	8
Fair copy of same, per folio ... ..	0	0	2
Attending justices and if necessary also assessor and umpire, for their several signatures, a total sum of ... ..	0	5	0
Writing letters specially directed to be written by the justices or umpire, each letter ... ..	0	2	0

*Fees to Witnesses.*

Seamen and others of same class for each day's full attendance ... ..	0	3	6
For any less time of attendance ... ..	0	2	0
Master mariners, pilots, engineers, and all other witnesses for each full day's attendance ... ..	0	5	0
For any less time of attendance ... ..	0	3	0

NOTE.—Travelling expenses, such as are fair and moderate and have been actually paid, to be allowed, but the same not to exceed 3*d.* per mile each way, in going to and returning from the place of meeting; and all witnesses attending before justices and Courts, whose usual place of abode is distant more than five miles from the place of meeting, and who may be necessarily detained there more than one day, to be allowed no greater sum for each night they may be so necessarily detained, than

0 1 0

*Fees to Practitioners.*

If any attorney be employed to conduct the inquiry, &c., he shall receive for each day's service ... ..	1	1	0
But no fee shall be paid to him for more than two days' attendance in any case.			

# APPENDIX III.

## ADMIRALTY COURT RULES, 1859 (a).

### PART I.

A.D. 1859

#### RULES, ORDERS AND REGULATIONS FOR THE HIGH COURT OF ADMIRALTY OF ENGLAND,

MADE IN PURSUANCE OF THE PROVISIONS OF THE ACTS OF THE  
3 & 4 VICT. c. 65 AND 66, AND 17 & 18 VICT. c. 78.

1. In the construction of these rules, orders, and regulations, the following terms shall (if not inconsistent with the context or subject-matter) have the respective meanings hereinafter assigned to them; that is to say :—

“Judge” shall mean the judge of the High Court of Admiralty of England, or any person lawfully authorized to sit in the said Court as judge.

“Registrar” shall mean the registrar of the High Court of Admiralty of England, or any deputy or assistant registrar of the said Court.

“Marshal” shall mean the marshal of the High Court of Admiralty of England, or any deputy or assistant marshal of the said Court.

“Counsel” shall mean any advocate, serjeant-at-law, or barrister-at-law, entitled to plead in the said Court.

“Proctor” shall mean any proctor, attorney or solicitor, entitled to practise in the said Court, or the party himself if conducting his cause in person.

“Registry” shall mean the registry of the High Court of Admiralty of England.

“Cause” shall mean any suit, action, appeal from award of justices, or other proceeding instituted in the said Court.

“Name” of any person shall mean both the Christian name and surname of such person.

(a) By the Judicature Act, 1875, s. 21, these rules are in force, except in so far as they are inconsistent with the rules made under the Judicature Acts. Those which follow are such as still exist.

A.D. 1859. 2. These rules, orders, and regulations shall, if previously confirmed by Her Majesty in Council, come into operation on the 1st day of January, 1860, and shall apply to all causes instituted on and after that day.

3. The practice of the Court in operation before the 1st day of January, 1860, shall continue in force, save in so far as it may be inconsistent with these rules, orders, and regulations.

#### *Entry of Appearance.*

37. If the proctor intends to object to the jurisdiction of the Court, the appearance may be entered under protest.

#### *Bail.*

39. If bail is to be given in the registry, the proctor shall, on filing in the marshal's office a *præcipe*, receive a notice of bail, a copy of which shall be served on the adverse proctor.

40. After the expiration of twenty-four hours from the time when the notice of bail shall have been so served, if the marshal has reported as to the sufficiency of the sureties, the proctor shall be entitled to take up the marshal's report. He shall then file in the registry a *præcipe* with the notice of bail and the marshal's report, and shall be informed at what hour the sureties may attend.

41. The bail bond shall be signed by the sureties, and shall be taken either before the registrar, or, by the registrar's directions, before one of the clerks in the registry.

42. Bail may also be taken under a special commission, or before standing commissioners to be appointed by the judge; but in every such case the sureties shall justify.

43. A bail bond taken before a commissioner appointed under a special or standing commission shall not be filed in the registry until after the expiration of twenty-four hours from the time when a notice, containing the names and addresses of the sureties and of the commissioner before whom the bail was taken, shall have been served upon the adverse proctor; and a copy of the notice, verified by affidavit, shall be filed with the bail bond.

44. A commissioner appointed under a special or standing commission shall not take bail on behalf of any person for whom he or any person in partnership with him is acting as proctor, attorney, solicitor, or agent.

45. The delays required by the preceding rules in regard to the taking of bail may be dispensed with by consent of the proctors in the cause.

#### *Releases.*

46. Property arrested by warrant shall only be released under the authority of an instrument issued from the registry, to be called a release.

47. A proctor at whose instance any property has been arrested, may, before an appearance has been entered, obtain the release thereof by filing a *præcipe* to withdraw the warrant.

48. A proctor may obtain the release of any property by paying A.D. 1859. into the registry the sum in which the cause has been instituted.

49. Cargo, arrested for the freight only, may be released by filing an affidavit as to the value of the freight, and by paying the amount of the freight into the registry.

50. In a cause of salvage, the value of the property under arrest shall be agreed, or an affidavit of value filed, before the property is released.

51. A proctor who shall have filed a bail bond in the sum in which the cause has been instituted, or paid such sum into the registry, and, if the cause be one of salvage, shall have also filed an affidavit as to the value of the property arrested, shall be entitled to a release for the same, unless there be a *caveat* against the release thereof outstanding in the "Caveat Release Book."

52. The release, when obtained, shall be left with a *præcipe* in the marshal's office by the proctor taking out the same, who shall also at the same time pay all costs, charges, and expenses attending the care and custody of the property whilst under arrest; and the marshal shall thereupon release the property.

#### *Caveat Release Book.*

53. A proctor in a cause desiring to prevent the release of any property under arrest, shall file in the registry a *præcipe*, and thereupon a *caveat* against the release of the property shall be entered in a book to be kept in the registry, called the "Caveat Release Book."

54. A party delaying the release of any property by the entry of a *caveat* shall be liable to be condemned in costs and damages, unless he shall show to the satisfaction of the judge good and sufficient reason for having so done.

#### *Caveat Warrant Book.*

55. A party, desiring to prevent the arrest of any property, may cause a *caveat* against the issue of a warrant for the arrest thereof to be entered in the registry.

56. For this purpose he shall cause to be filed in the registry a *præcipe*, signed by himself or his proctor, undertaking to enter an appearance in any cause that may be instituted against the said property, and to give bail in such cause in a sum not exceeding an amount to be stated in the *præcipe*, or to pay such sum into the registry; and a *caveat* against the issue of a warrant for the arrest of the property shall thereupon be entered in a book to be kept in the registry, called the "Caveat Warrant Book."

57. A proctor, instituting a cause against any property in respect of which a *caveat* has been entered in the "Caveat Warrant Book," shall, before filing the *præcipe* to lead the institution of the cause, serve a copy thereof upon the party on whose behalf the *caveat* has been entered, or upon his proctor.

58. Within three days from the filing of the *præcipe*, the party on whose behalf the *caveat* has been entered shall, if the sum in which the cause is instituted does not exceed the amount for which he has undertaken, give bail in such sum, or pay the same into the registry.

**A.D. 1859.** 59. After the expiration of twelve days from the filing of the *precipe*, if the party on whose behalf the *caveat* has been entered shall not have given bail in such sum, or paid the same into the registry, the plaintiff's proctor may proceed with the cause by default, and on filing his proofs in the registry may have the cause placed on the list for hearing.

60. If, when the cause comes before the judge, he is satisfied that the claim is well founded, he may pronounce for the amount which appears to him to be due, and may enforce the payment thereof by monition and attachment against the party on whose behalf the *caveat* has been entered, and by the arrest of the property, if it then be or thereafter come within the jurisdiction of the Court.

61. The preceding rules shall not prevent a proctor from taking out a warrant for the arrest of any property, notwithstanding the entry of a *caveat* in the "Caveat Warrant Book;" but the party at whose instance any property in respect of which a *caveat* is entered shall be arrested, shall be liable to be condemned in costs and damages, unless he shall show, to the satisfaction of the judge, good and sufficient reason for having so done.

70. When an appearance has been given under protest, the defendant's proctor shall, within twelve days from the entry of such appearance, file his petition on protest, and the same rules shall apply to the pleadings on a protest as to the pleadings in a cause on its merits.

#### *Affidavits (a).*

82. Every affidavit filed in any cause shall be divided into short paragraphs, numbered consecutively, and shall be in the first person.

83. The name, address, and description of every person making an affidavit shall be inserted therein.

84. The names of all the persons making the affidavit, and the dates when and the places where sworn, shall be inserted in the jurat.

85. Where an affidavit is made by any person who is blind, or who, from his signature thereto or otherwise, appears to be illiterate, the person before whom the affidavit is made shall state in the jurat that the affidavit was read to the witness in his presence, and that the witness appeared to understand the same, and made his mark or wrote his signature in the presence of the person before whom the affidavit was made.

86. No affidavit shall be received which has been sworn before the party on whose behalf the same is offered, or before his proctor or a partner or clerk of the same.

#### *Written Depositions.*

87. Written depositions may be taken either before an examiner of the Court, or before a commissioner appointed under a commission.

(a) See J. A., O. XXXVII. r. 3.

88. Witnesses may be produced for examination before an examiner within three miles of the General Post Office, London: but the proctor producing him shall, twenty-four hours at least before the witness is examined, serve a notice upon the adverse proctor, stating the title and number of the cause, the name and address of the witness, the articles of the pleadings to which he is to be examined, the name of the examiner, the name of the interpreter, if any, and the day, hour, and place appointed for the examination.

89. No witness shall be produced, either before an examiner or before a commissioner, at a greater distance than three miles from the General Post Office, London, save by order of the Court.

90. The examination in chief, cross-examination, and re-examination of witnesses examined before an examiner or a commissioner shall be conducted either by counsel or by the proctors, or their substitutes; or the examination in chief may, on the application of the proctor producing the witnesses, be conducted by the examiner or commissioner himself. In any case the examiner or commissioner may put any questions to the witnesses for the purpose of eliciting the truth as to him shall seem fit.

91. The fees of one counsel may be allowed by the registrar on taxation for attending the examination of witnesses before an examiner or commissioner.

92. When the examination of any witness is completed, the examiner or commissioner shall read over the deposition to the witness, who shall thereupon sign the same; and the examiner or commissioner shall certify at the foot thereof that the deposition has been read over audibly and distinctly to the witness, and that he has acknowledged the same to be true.

93. If the witness refuse to sign his deposition, the examiner or the commissioner shall certify at the foot of the deposition that the witness has so refused, and that the deposition is in accordance with the evidence given by the witness; and the deposition of the witness may thereupon be used at the hearing of the cause.

94. The judge may, on the application of either proctor in the cause, but at the expense in the first instance of the party on whose behalf the application is made, direct the evidence of the witnesses to be taken down by a short-hand writer or reporter appointed by the Court, who shall be previously sworn faithfully to report the evidence; and a transcript of the short-hand writer's or reporter's notes, certified by him to be correct, shall be admitted to prove the oral evidence of the witnesses.

95. When the examinations of the witnesses have been completed, the examiner or commissioner shall file the depositions of the witnesses in the registry, with a special return setting forth the whole of his proceedings.

#### *References.*

107. The following rules shall apply to references by the judge to the registrar, whether the reference be to the registrar alone or to the registrar assisted by one or by two merchants.

108. Within twelve days from the day when the order for the reference is made, the proctor for the claimant shall file the claim and



A.D. 1859. affidavits ; and within twelve days from the day when the claim and affidavits are filed, the adverse proctor shall file his counter-affidavits.

109. From the filing of the counter-affidavits six days only shall be allowed for filing any further affidavits by either proctor, save by order of the judge, or by permission of the registrar.

110. Within three days from the expiration of the time allowed for filing the last affidavits, the proctor for the claimant shall file in the registry a notice, with the stamps for the reference affixed thereto, praying to have the reference placed on the list for hearing ; and if he shall not do so, the adverse proctor may apply to the Court to have the claim dismissed with costs.

111. At the time appointed for the reference, if either proctor be present, the reference may be proceeded with ; but the registrar may adjourn the reference from time to time as he may deem proper.

112. Witnesses may be produced before the registrar for examination, and the evidence shall on the application of either proctor, but at the expense in the first instance of the party on whose behalf the application is made, be taken down by a short-hand writer or reporter appointed by the Court, who shall be sworn faithfully to report the evidence ; and a transcript of the short-hand writer's or reporters's notes, certified by him to be correct, shall be admitted to prove the oral evidence of the witnesses in an objection to the registrar's report.

113. Counsel may attend the hearing of any reference, but the expenses attending the employment of counsel shall not be allowed on taxation unless the registrar shall be of opinion that the attendance of counsel was necessary.

114. The registrar may, if he think fit, report whether any and what part of the costs of the reference should be allowed, and to whom.

115. The proctor for the claimant shall, within six days from the time when he has received a notice from the registry that the report is ready, take up and file the same in the registry.

116. If the proctor for the claimant shall not take the steps prescribed in the next preceding rule, the adverse proctor may take up and file the report, or may apply to the Court to have the claim dismissed with costs.

117. A proctor intending to object to the registrar's report shall, within six days from the filing of the report, file in the registry a notice, a copy of which shall have been previously served on the adverse proctor ; and within a further period of twelve days he shall file his petition in objection to the report.

118. All the rules hereinbefore prescribed respecting the pleadings and proofs in a cause, and the printing thereof, shall, so far as they are applicable, apply to the pleadings, proofs, and printing in an objection to a report of the registrar.

#### *Taxation of Costs (a).*

119. A proctor entitled to have his bill of costs taxed by the registrar shall file the same in the registry, a copy thereof having

(a) See App. II., Orders as to Costs and Fees, *ante*, p. 360.

been previously served upon the adverse proctor (if any); and a A.D. 1869 notice shall be sent from the registry of the time appointed for the taxation.

120. At the time appointed for the taxation the registrar may proceed to tax the bill, if only one of the proctors in the cause be present.

*Sales by Order of the Court.*

124. Every commission for the appraisement or sale of property under the decree of the Court shall, unless the judge shall otherwise order, be executed by the marshal or his substitutes.

125. The marshal shall pay into Court the gross proceeds of sale of any property which shall have been sold by him, and shall at the same time bring into the registry the account of sale, with vouchers in support thereof, for taxation by the registrar.

126. Any person interested in the proceeds may be heard before the registrar on the taxation of the marshal's account of expenses, and an objection to the taxation shall be heard in the same manner as an objection to the taxation of a proctor's bill of costs.

*Payment of Monies.*

127. All monies paid into Court shall be paid to the account of "the Registrar of the High Court of Admiralty" at the Bank of England, upon receivable orders to be obtained in the registry.

128. All orders for the payment of money out of Court shall be signed by the judge.

129. Bail for latent demands shall not, unless the judge shall otherwise order, be required on the payment of money out of the registry.

130. A proctor desiring to prevent the payment of money out of the registry shall file a *præcipe*, and thereupon a *caveat* shall be entered in a book to be kept in the registry, called the "Caveat Payment Book."

*Claims in respect of Volunteers into the Royal Navy.*

131. A proctor desiring to obtain repayment, under the provisions of the Merchant Shipping Act, 1854, of the excess of wages paid to a substitute hired in the place of a seaman volunteering into the royal navy, shall file a claim, form of which may be obtained in the registry.

132. If the claim be correct, he shall, on providing the proper stamp, receive a certificate for payment of the sum due.

133. If the claim be incorrect, he shall, on providing the proper stamp, receive the registrar's opinion in writing.

134. If the proctor be dissatisfied with the opinion of the registrar, he may apply to the judge on motion to review the same, as prescribed by the Merchant Shipping Act, 1854.

A.D. 1859.*Naval Prize.*

135. Proctors, navy agents, and other persons having claims against the proceeds of any prize, salvage, bounty, or other monies payable and distributable to and amongst the officers and crews of Her Majesty's ships and vessels of war, and which may have been paid to the account of the Paymaster General at the Bank of England on account of naval prize, under the provisions of the Act of 17 Vict. c. 19, shall file such claims in the registry for taxation by the registrar.

136. They may apply to the judge on motion to review the registrar's taxation.

137. Orders for the payment of the sums which shall be found due in respect of such claims shall be signed by the registrar, and forwarded by him to the accountant-general of the navy.

*Summonses.*

146. If the proctor summoned do not appear at the time named in the summons, the cause shall be called on, and the judge shall thereupon make such order as to him shall seem fit.

147. If the proctor by whom the summons has been taken out do not appear to support the same at the time named in the summons, the judge may, on the application of the proctor summoned, dismiss the summons with costs.

148. If, before the time named in the summons, the summons be filed in the registry, with an indorsement thereon signed by the proctor summoned, consenting to an order being made in the terms and to the effect of the summons, the registrar may, if he shall think it reasonable and such as the judge would under the circumstances allow, make the order, and such order shall have the same force and effect as if the same had been made by the judge in person.

149. Either proctor may employ counsel at the hearing of any summons before the judge in chambers, if notice thereof has been given to the adverse proctor two days before the hearing of the summons.

*Notices.*

150. All notices required by these rules or by the practice of the Court shall be in writing or printed, or partly in writing and partly printed.

151. The service of a notice by a proctor may be effected by his clerk or agent, and, if required to be verified, shall be verified by affidavit.

152. Notices required to be left in the registry shall be signed by the proctor, or by his clerk for him.

153. Notices sent from the registry may be sent by post, and the day on which the notice is posted shall be considered as the day of the service thereof, and the posting thereof shall be a sufficient service.

*Consent of Proctors.*

A.D. 1859.

154. Service of a notice by one proctor on another may be waived by consent.

155. Any agreement between the proctors in a cause, if in writing, dated and signed by both proctors, may, if the registrar think it reasonable and such as the judge would under the circumstances allow, be filed, and shall thereupon become an order of Court, and such order shall have the same force and effect as if the same had been made by the judge in person.

*Filing Documents.*

156. No document shall be filed unless properly indorsed and stamped.

157. No document, of which a copy is required to be served on the adverse proctor, shall be filed in the registry without a certificate indorsed thereon, signed by the proctor or by his clerk for him, to the effect that the document has been duly served.

158. If, before the expiration of the time allowed for filing any document, application cannot be made to the judge for an extension thereof, the registrar may, upon reasonable cause being shown, extend the time for filing the same; but the time shall in no case be extended beyond the day upon which the judge shall next sit in chambers.

159. If a proctor, save by permission of the judge or registrar, do not file or serve on the adverse proctor, as may be required of him, any document within the time allowed by any of these rules, the adverse proctor shall not be compelled to receive the same, save by order of the judge.

*Minutes.*

160. On filing any instrument or document, the proctor shall state, in writing, on a printed form to be obtained in the registry, called a minute, the nature of the instrument or document filed, and the date of the filing thereof.

161. A record of all minutes, and of all causes instituted and appearances entered, and of all decrees and orders of the Court, shall be entered in a book to be kept in the registry, called the "Minute Book."

*Præcipes.*

162. Forms of the *præcipes* required to be filed in the registry or the marshal's office may be obtained on application in the registry or the marshal's office respectively. They may be varied or altered by the judge at his discretion.

163. Every *præcipe* shall be signed either by the party, or by his proctor, or by a clerk of the latter for him.

164. If a *præcipe* be not properly filled up and stamped, the registrar or marshal, as the case may be, may refuse to receive the same or to act thereon.

A.D. 1859.*Instruments, and the Service thereof.*

165. Every instrument which is signed by the registrar and issued under the seal of the Court shall be prepared in the registry, on a *præcipe* filed by the proctor applying for the same, and shall bear date on the day on which it is issued.

166. Every instrument shall be served within six months from the day on which it bears date, otherwise the service thereof shall not be valid.

167. No instrument except a warrant shall be served on a Sunday, Good Friday, or Christmas Day ; and a warrant served on any of those days shall be deemed to have been served on the next following day.

168. Every warrant or other instrument required to be served by the marshal shall be left by the proctor taking out the same with a *præcipe* in the marshal's office.

169. Instruments not required to be served by the marshal may be served by the proctor, his clerk or agent.

172. The service of any instrument by the marshal shall be verified by his certificate. The service of any instrument by a proctor, his clerk or agent, shall be verified by an affidavit.

*Subpœnas.*

173. Subpœnas may be issued under the seal of the Court with the names of the witnesses in blank ; and any subpœna may contain the names of any number of witnesses.

*Caveats.*

174. A *caveat*, whether against the issue of a warrant, the release of property, or the payment of money out of the registry, shall not remain in force for more than six months from the day of the date thereof.

175. A *caveat* may be withdrawn by the party on whose behalf it has been entered or by his proctor ; but the *præcipe* to lead the withdrawal thereof shall, save by permission of the registrar, be signed by the same person who signed the *præcipe* to lead the entry of the *caveat*.

176. Application may be made to the judge on motion or by summons to overrule any *caveat*.

*Copies.*

177. All copies of documents, whether issued from the registry or otherwise, shall be counted and charged for at the rate of seventy-two words per folio ; and every numeral, whether contained in columns or otherwise written, shall be counted and charged for as a word.

178. Office copies of documents furnished from the registry shall not be collated with the originals from which the same are copied, unless specially required.

*Searches.*

A.D. 1859.

179. The parties and proctors in a cause, and their clerks, may, while the cause is pending, and for a period of three months from the termination thereof, inspect free of charge all the acts, minutes, and documents filed therein.

180. Other persons may inspect the Court books on payment of the proper fee.

181. No person, except a party or proctor in the cause or a clerk of the latter, shall be allowed, save by permission of the judge, to inspect any of the documents in a pending cause.

*Seal of the Court.*

182. All instruments and orders or decrees of Court, office copies, and other documents issued from the registry, shall be sealed with the seal of the Court.

*Office Hours and Holidays.*

183. Save on the holidays mentioned in the next following rule (a), the registry shall be open for the despatch of business on every day throughout the year from 10 A.M. to 4 P.M., the marshal's office from 10 A.M. to half-past 4 P.M. (b).

*Computation of Time.*

185. In computing the time within which an appearance shall be given to any instrument, summons, notice, or other process, neither the day of the service thereof, nor any of the holidays mentioned in the preceding rule, shall be included; and the same rule shall be observed in regard to the service and filing of any document (c).

*Forms.*

186. The forms annexed to these Rules, Orders, and Regulations shall be followed as nearly as the circumstances of each case will allow (d).

*Fees.*

187. The fees to be paid to the officers and practitioners in causes in the Court are set forth in the schedules hereto annexed (e).

(a) Sundays, New Years Day, Good Friday, Easter Monday and Tuesday, Whit Monday and Tuesday, and Christmas Day.

(b) See J. A., O. LXI.

(c) See J. A., O. LVII.

(d) For such as exist, see App. IV., *post*.

(e) For such as exist, see App. II., *ante*.

A.D. 1875.

## PART II.

**ADDITIONAL RULES OF COURT UNDER THE SUPREME  
COURT OF JUDICATURE ACT, 1875, AS TO PRINTING,  
12TH AUG., 1872.**

## ORDER I.

Printing deposition, &c. When any written deposition of a witness has been filed for use on a trial, such deposition shall be printed, unless otherwise ordered.

## ORDER II.

The rules of Court as to printing depositions and affidavits to be used on a trial shall not apply to depositions and affidavits which have previously been used upon any proceeding without having been printed.

## ORDER III.

Other affidavits than that required to be printed by Order XXXVIII., Rule 6, in the schedule to the Supreme Court of Judicature Act, 1875, may be printed if all the parties interested consent thereto, or the Court or judge so order.

## ORDER IV.

The 3rd rule of the Order XXXIV., in the first schedule to the Supreme Court of Judicature Act, 1875, shall apply to a special case, pursuant to the Act of 13 & 14 Vict. c. 35. (*Annulled, April, 1880.*)

## ORDER V.

Where, pursuant to rules of Court, any pleading, special case, petition of right, deposition, or affidavit is to be printed, and where any printed or other office copy thereof is to be taken, the following regulations shall be observed:—

1. The party on whose behalf the deposition or affidavit is taken and filed is to print the same in the manner provided by Rule 2 of Order LVI. in the first schedule to the Supreme Court of Judicature Act, 1875.
2. To enable the party printing to print any deposition, the officer with whom it is filed shall, on demand, deliver to such party a copy written on draft paper on one side only.
3. The party printing shall, on demand in writing, furnish to any other party or his solicitor any number of printed copies, not exceeding ten, upon payment therefor at the rate of 1d. per folio for one copy, and  $\frac{1}{2}$ d. per folio for every other copy.
4. The solicitor of the party printing shall give credit for the whole amount payable by any other party for printed copies.
5. The party entitled to be furnished with a print shall not be allowed any charge in respect of a written copy, unless the Court or judge shall otherwise direct.

6. The party by or on whose behalf any deposition, affidavit, or certificate is filed, shall leave a copy with the officer with whom the same is filed, who shall examine it with the original and mark it as an office copy; such copy shall be a copy printed as above provided where such deposition or affidavit is to be printed. A.D. 1875.
7. The party or solicitor who has taken any printed or written office copy of any deposition or affidavit is to produce the same upon every proceeding to which the same relates.
8. Where any party is entitled to a copy of any deposition, affidavit, proceeding, or document filed or prepared by or on behalf of another party, which is not required to be printed, such copy shall be furnished by the party by or on whose behalf the same has been filed or prepared.
9. The party requiring any such copy, or his solicitor, is to make a written application to the party by whom the copy is to be furnished or his solicitor, with an undertaking to pay the proper charges, and thereupon such copy is to be made and ready to be delivered at the expiration of twenty-four hours after the receipt of such request and undertaking or within such other time as the Court or Judge may in any case direct, and is to be furnished accordingly upon demand and payment of the proper charges.
11. It shall be stated in a note at the foot of every affidavit filed, on whose behalf it is so filed, and such note shall be printed on every printed copy of an affidavit or set of affidavits, and copied on every office copy and copy furnished to a party.
12. The name and address of the party or solicitor by whom any copy is furnished is to be endorsed thereon in like manner as upon proceedings in Court, and such party or solicitor is to be answerable for the same being a true copy of the original or of an office copy of the original of which it purports to be a copy, as the case may be.
13. The folios of all printed and written office copies, and copies delivered or furnished to a party, shall be numbered consecutively in the margin thereof, and such written copies shall be written in a neat and legible manner on the same paper as in the case of printed copies.
14. In case any party or solicitor who shall be required to furnish any such written copy as aforesaid shall either refuse or, for twenty-four hours from the time when the application for such copy has been made, neglect to furnish the same, the person by whom such application shall be made shall be at liberty to procure an office copy from the office in which the original shall have been filed, and in such case no costs shall be due or payable to the solicitor so making default in respect of the copy or copies so applied for.
15. Where, by any order of the Court (whether of appeal or otherwise) or a Judge, any pleading, evidence, or other document is ordered to be printed, the Court or Judge may order the expense of printing to be borne and allowed, and printed copies to be furnished by and to such parties and upon such terms as shall be thought fit.



A.D. 1875.

## PART III.

THE CONSOLIDATED COUNTY COURT ORDERS AND  
RULES, 1875, WITH FORMS AND SCALES OF COSTS  
AND FEES.\*

## ORDER XIX.

1. Every order for the payment of money may be enforced in the same manner as a judgment for debt or damages is enforced under section 94 of the County Courts Act, 1846.

## ORDER XXXIII.

## ADMIRALTY ACTIONS.

*Sittings of the Court.*

Where  
action may  
be tried.  
Undertak-  
ing by  
solicitor for  
expenses.

1. The Judge may try or partly try the action at any place within the Admiralty district of the Court.

2. Where application is made to the Judge for the trial or part trial of an Admiralty action at a place in which a County Court does not sit, the solicitor shall file a *præcipe* undertaking to provide at his expense a place to the satisfaction of the Judge in which the action may be tried, and pay the necessary expenses of the Court and officers so attending.

Sittings of  
the Court in  
Admiralty.

3. The days of the sitting of the Court shall be those appointed for the transaction of the ordinary general business of the County Court held in the city or town mentioned in the name of the Court, or such other days as the Judge may from time to time appoint for the trying of an Admiralty action where, from the detention of a vessel or otherwise, a prompt determination of the action is desirable.

*Institution of Action.*

Commence-  
ment of  
action.

4. A solicitor desiring to commence an Admiralty action shall file a *præcipe* which shall state the nature of the action, the name, address, and description of the party in whose behalf it is instituted, the name of the solicitor, and an address within three miles of the court-house at which it shall be sufficient to leave all instruments and documents in the action required to be served upon him, and it shall also state the name of the owner or owners or other person against whom the action is instituted, or it shall state that the action is instituted against the vessel or other property to which the action relates.

Notice of  
commence-  
ment of  
action to  
be given to  
Consul in  
certain  
cases.

5. In an Admiralty action for wages against the owners of a foreign vessel, notice of the commencement of the action shall be given to the consul or vice-consul of the state to which the vessel belongs, if there be one resident within the district of the Court, and a copy of the notice shall be annexed to the *præcipe*.

\* The orders are inserted only when they relate to Admiralty actions.

*Summons.*

A.D. 1875.

6. Immediately upon the filing of the *præcipe* the registrar shall issue a summons for service by the solicitor, or, if so required, by the bailiff of the Court.

Summons.

7. Where the vessel or property to which the action relates is within the district, the summons may be served by delivering it to the person who is at the time of service apparently in charge of the vessel or property, or, if there is no person in charge, by nailing it on the main mast or the single mast of the vessel; and in other cases the summons must be served personally upon the defendant, unless the Judge, or in his absence the registrar, shall upon facts duly verified upon affidavit allow of substituted service.

Service of summons.

*Appearance in Admiralty Actions.*

8. A solicitor desiring to enter an appearance in an action shall file a *præcipe*, and thereupon an entry of his appearance shall be made in the Admiralty suits book.

Appearance.

9. The *præcipe* shall state the name, address, and description of the party on whose behalf the appearance is entered, the name of the solicitor, and an address within three miles of the court-house at which it shall be sufficient to leave all instruments and documents in the action required to be served upon him.

Contents of præcipe.

10. Any person claiming to have an interest in the vessel or property, whether cognizable by the Court or not, may intervene for the purpose of having the case transferred to the High Court of Justice.

Person claiming interest may intervene.

11. Upon the arrest of any vessel or property an appearance may be entered the same as upon the service of the summons.

Appearance on arrest.

12. Where an appearance has been entered the registrar shall upon application by either plaintiff's or defendant's solicitor give to each solicitor in the action, and where no appearance has been entered then to the plaintiff or his solicitor, a notice under the seal of the Court, stating the day upon which the action has been directed by the Judge to be heard.

Notice of day of hearing.

*Arrest.*

13. Where, after the commencement of an Admiralty action, it is desired to arrest any vessel or property, the solicitor must file an affidavit stating the facts which render it probable that it will be removed out of the jurisdiction of the Court.

Affidavit to be filed.

14. In an Admiralty action for necessaries or for wages the national character of the vessel shall be stated in the affidavit.

When nationality of vessel to be stated.

15. Where upon the filing of such affidavit the registrar, in the absence of the Judge, is satisfied with the evidence, he may issue a warrant for the arrest and detention of the vessel or property, and where he is not satisfied he may require further evidence to be adduced.

When warrant for arrest may issue.

16. A warrant of arrest may be executed on Sunday, Good Friday, or Christmas Day, as well as on any other day.

When warrant for arrest may be executed.

*Release of Property.*

17. Where in an Admiralty action the amount sued for is paid into Court, together with costs, or the security completed, or where

Release on payment into Court.

**A.D. 1875.** the plaintiff's solicitor usually requires it, the registrar shall deliver to the solicitor an order directed to the high bailiff of the Court, authorizing and directing him, upon payment of all costs, charges, and expenses attending the custody of the property, to release it forthwith.

Release in  
salvage  
action.

18. Notwithstanding the last preceding rule, the property, in an Admiralty action for salvage, shall not be released until its value has been ascertained either by affidavit, by agreement, or by appraisal, save by consent of the plaintiff or his solicitor.

#### *Transfer of Action.*

Transmis-  
sion of pro-  
ceedings on  
transfer to  
High Court.

19. Where an action is transferred to the High Court of Justice by order thereof, the registrar of the Court, upon the service of the order of transfer, shall send by post the proceedings to the proper officer of such Court.

The like on  
transfer to  
another  
Court.

20. Where a Court orders the transfer of an action to the High Court of Justice or to another Court, the registrar shall send by post the order, together with the proceedings, to the registrar of the High Court of Justice or to the Court to which it is transferred.

#### *Second or Cross Action.*

Costs in  
cross action  
may be re-  
fused.

21. Where it shall appear to the Court that the plaintiff in an Admiralty action (hereafter called the second action), was or is the defendant in an action (hereafter called the first action) in another Court arising out of the same transaction, and that he did not propose to the plaintiff in the first action that by agreement jurisdiction should be given to the Court in which the first action was instituted, to hear and determine the second action, the Judge may refuse the plaintiff in the second action his costs if he shall think fit.

First and  
second ac-  
tions may  
be tried  
together.

22. Where a second or cross action for damage has been instituted by a defendant in an action for damage, and the second action has been instituted, by agreement or otherwise, in the Court in which the first action was instituted, or has been transferred to the said Court by order of any other Court, the Court may direct that both actions may be tried at the same time and upon the same evidence.

Proceedings  
on order  
against un-  
known de-  
fendant.

23. Where a judgment or order has been obtained against an unknown defendant, the vessel or property to which the action relates shall not be taken in execution, but it may be arrested and detained under the provisions of section 22 of the County Courts Admiralty Jurisdiction Act, 1868, or kept under arrest, if already arrested.

Proceedings  
on discovery  
of unknown  
defendant.

24. Where an order has been obtained in an action against an unknown defendant, and the name of the defendant is subsequently ascertained, the adverse solicitor may deliver to the registrar a *præcipe* stating the name, address, and description of the defendant, and thereupon the registrar shall issue to the solicitor, or if required to the bailiff for service, a notice of the judgment or order, stating that if the defendant does not within four clear days from the day of service deliver a *præcipe* to the registrar applying for a re-hearing of the action, the vessel or property to which the action relates will be sold in execution.

25. The notice shall be served personally upon the defendant, unless the Judge, or in his absence the registrar, shall upon facts duly verified upon affidavit allow of substituted service.

A.D. 1875.

Service of notice on defendant.

*Execution against Vessel.*

26. Where under a warrant of execution a vessel is seized, the high bailiff shall, before selling the same, cause an inventory and valuation thereof to be made by an appraiser, and the vessel shall not be sold for less than the appraised value thereof, except by order of the Court, and 10s. per cent. on the appraised value of the vessel, with reasonable expenses for travelling and maintenance, if the vessel is beyond three miles from registrar's office, shall be allowed to the appraiser.

Proceedings on execution against a vessel.

27. On the completion of the sale the high bailiff shall pay the proceeds arising therefrom into Court, return the warrant, and file an account of the sale and of his fees thereon, signed by him, together with the certificate of appraisement signed by the appraiser.

Proceeds of sale to be paid into Court.

28. On the completion of the purchase the high bailiff shall deliver up the property to the purchaser, and if required so to do shall execute a bill of sale to him at the expense of the purchaser.

Delivery of property to purchaser.

*Transfer of Sale.*

29. Where the vessel has been arrested or has been seized under a warrant of execution, and the sale of the vessel has been ordered to be transferred to the High Court of Justice, the vessel shall be retained by the high bailiff until the marshal shall, by order of the High Court of Justice, take possession thereof.

Proceedings on transfer of sale.

30. A solicitor desiring that the sale of any vessel or property should be conducted in the High Court of Justice, may at any time after judgment give security to the amount of £10, and deliver to the registrar an application for an order for the transfer of the proceedings for sale to the said Court.

Application for transfer of proceedings for sale.

31. The registrar shall transmit such application to the Judge for his order thereon, if the Court be not sitting, and shall in any case certify on the application that the security for costs has been given.

Application to be transmitted to Judge.

*Notice of Defence, in Collision.*

32. Where in actions for damage by collision the defendant intends to set up as a defence that the vessel was by compulsion of law in the charge of a pilot, he should give notice thereof to the adverse solicitor as soon after the service of summons as may be, and if he shall fail to give such notice the Judge shall, in exercising his discretion as to costs, consider what effect the non-delivery of the notice has had in the action.

Notice of defence in actions for damage by collision.

*Tenders.*

33. A solicitor desiring to make a tender shall give a notice to the adverse solicitor of the terms and amount of the tender, and shall pay the amount into Court, and deliver a *præcipe*.

Notice of proposed tender.

**A.D. 1875.** **34.** Within forty-eight hours from the payment the adverse solicitor shall file a notice stating whether he accepts or rejects the tender, and, if he shall not do so, he shall be deemed to have rejected it.

Notice of acceptance of tender.

*Payment out of Court.*

**35.** Money ordered in an Admiralty action to be paid out of Court may be paid to the solicitor without the production of a power of attorney from the party entitled to receive the money, unless the Judge shall otherwise order.

Payment out of Court to solicitor.

**36.** Where more than one action has been instituted against a vessel or any property, and the same has been sold, the proceeds thereof shall be retained in Court, to abide the decision of the Court in the various actions, unless the Judge shall otherwise order.

Retainer of moneys in Court where more than one action.

*Appraisement.*

**37.** The registrar may, on the application of either solicitor, and whether before or after judgment, order any property under arrest to be appraised.

Appraisement.

*Records of the Court.*

**38.** The solicitors in an action, their clerks, and the parties themselves, may, while the action is pending, and for one year after its termination, inspect, free of charge, all the records in the action.

Inspection of records.

**39.** In a pending action no person other than the solicitor or his clerk, or the party in the action, shall be entitled to inspect the records in the action without the permission of the registrar.

Who entitled to inspection during pendency of action.

**40.** In an action which is terminated, any person may, on delivering to the registrar a *præcipe*, and on payment of the proper fee, inspect the records in the action.

The like on termination of action.

*Copies.*

**41.** Any person entitled to inspect any instrument or document in an action shall, on delivering to the registrar a *præcipe*, and on payment of the proper charges for the same, be entitled to an office copy thereof.

Office copies.

*Assessors.*

**42.** Every solicitor requiring the Judge to be assisted by two assessors shall, at the time of delivering the *præcipe*, pay to the registrar the sum of two guineas, if the amount claimed does not exceed £100, and four guineas if it does exceed that amount, and such payments shall be considered as costs in the action, unless otherwise ordered by the Judge.

Payment on application for assessors by party.

**43.** Where the Judge requires the assistance of two assessors, the above fees shall be paid by the plaintiff or his solicitor before the trial, and shall be costs in the action, unless otherwise ordered by the Judge.

The like, on requirement of Judge.

**44.** Where an action is adjourned, the plaintiff shall pay the assessors' fees for the day of adjournment forthwith after the order of adjournment is made by the Court.

Assessors' fees on adjournment.

45. Upon the delivery of the aforesaid *procipto* or upon the order of the Judge as last aforesaid, the registrar shall select from the list of assessors the names of two persons whom he may, having reference to the nature of the action to be tried, consider most capable of assisting the Judge in trying and determining it, and shall send to each of such persons by post a summons in the form annexed.

A.D. 1875.  
Selection of assessors.

46. The registrar of the Court shall pay to every assessor for each day's attendance and service in every action one guinea or two guineas, according as the amount claimed in the action does or does not exceed £100.

Payment to assessors.

ORDER XXXVI.

Costs.

1. All costs shall be taxed by the registrar of the Court, subject to the review of such taxation by the Judge.

Taxation of costs.

2. In taxing the costs incurred in the High Court of Justice previous to the transmission of the action to the County Court under sections 7 or 10 of the County Courts Act, 1867, the registrar shall tax the same according to the scale of costs and fees in use in such High Court of Justice.

Taxation of costs under 30 & 31 Vict. c. 142, ss. 7 and 10.

3. The costs of the witnesses, whether they have been examined or not, may, unless otherwise ordered by the Court, be allowed, though they have not been summoned, but their allowance for attendance shall in no case exceed the highest rate of the allowances mentioned in the scale in the schedule.

Costs of witnesses.

4. Seamen necessarily detained on shore for the purpose of the action shall be allowed such remuneration as the Court may think reasonable compensation for their loss of time.

Compensation to seamen.

5. Money paid into Court on a judgment shall be appropriated first in satisfaction of the Court fees and costs, and afterwards in satisfaction of the original demand.

Appropriation of moneys paid into Court.

6. Costs of warrants against the goods, whether executed or unexecuted or unproductive, shall be allowed against the defendant, unless the Judge shall otherwise direct.

Costs of warrants.

7. No possession fee shall be payable where an execution is paid out at the time of the levy; but, if the officer shall necessarily remain in possession more than half an hour, and the execution shall be paid out on the day of levy, the possession fee for that day shall be charged.

Possession fees. 9 & 10 Vict. c. 95, s. 106.

8. No appraisalment is to be made until the fifth day of the bailiff's holding possession of the goods under an execution, unless where the goods are of a perishable nature, or are sold at the request of the party before the expiration of four days, or unless the goods are removed.

Appraisalment.

9. Costs in actions under the County Courts Act, 1856, s. 23, shall be taxed according to the scale of taxation used in the High Court of Justice, so far as it is directly applicable; and, where it is not so applicable, the principle of that scale shall be followed.

Taxation of costs under 19 & 20 Vict. c. 108 s. 23.

11. In actions where the claim exceeds £20, and the plaintiff

Costs in

**A.D. 1875.** recovers less than £20, he shall, if the Judge shall so order, be entitled to recover costs, according to the scale relating to actions where claim exceeds £20. above £20, and the defendant, if successful, shall be entitled to recover costs according to the said scale, unless the Judge shall otherwise order.

Costs of counter-claim.

12. Where from the amount, or from the nature of any defence or counterclaim, the costs in an action for recovering or enforcing the same would be taxed upon a higher scale than that applicable to the action in which such defence or counterclaim is made, then the costs shall be taxed upon such higher scale.

Costs where plaintiff recovers less than he claims.

13. Where the plaintiff recovers less than the amount of his claim, so as to reduce the scale of court fees and costs, he shall pay the difference, unless the reduction shall be caused by a set-off.

### ORDER XXXVII.

Entry of plaintiff by letter.

6. Where a person desires to enter a plaint in a Court within the district of which he does not reside, he may, instead of attending in person or by agent at the Court, transmit, free of cost, to the registrar, the following :—

- (1.) A *præcipe* showing the name, address, and description of the plaintiff and defendants, the cause of action, and the amount claimed; and, where the claim exceeds 40s., as many copies of the statement of the particulars or cause of action as there are defendants, and an additional copy to file.
- (2.) A post office order for the fees payable upon the entry of the plaint, payable at the post office of the court town.
- (3.) An envelope addressed to himself, with a penny postage stamp thereon.

And upon the receipt of the above the registrar shall enter the plaint, and forward the plaint note to the plaintiff in the addressed envelope.

Metropolitan Courts.

7. For the purpose of the two foregoing rules the several districts of the metropolitan Courts shall be considered *inter se* as one district only.

Party may act by solicitor or agent.

8. Where by these rules any act may be done by any party, such act may be done either in person or by his solicitor or agent, if it can be legally done by an agent.

Service on solicitor deemed service on party.

9. Where a party acts by solicitor, service of any proceeding or document upon such solicitor, or delivery of the same at his office, or sending the same to him by post, shall be deemed to be good service upon the party for whom such solicitor acts, as upon the day when the same is so served or delivered, or upon which in the ordinary course of post it would be delivered, except in cases where by these orders personal service upon a party is required.

Practice on service by solicitor.

10. Where a solicitor undertakes the service of any process, he shall make the necessary copies of each process, and the registrar shall seal the same and return them to the solicitor for service.

Notice of interlocutory proceedings may be served by solicitor.

11. Any notice relating to any interlocutory proceeding may, by leave of the registrar, be served by the solicitor of the party requiring to effect such service; but the costs of such service and proof thereof shall not be allowed, except by order of the Court.

52. A note of every judgment in an Admiralty action shall, within A.D. 1875. ten days of the making thereof, be transmitted by the registrar to the registrar of County Courts Judgments in London, who shall register the same as heretofore.

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ADMIRALTY FORMS.

243.

PRÆCIPUE ON ENTRY OF PLAINT.

Admiralty Jurisdiction.

In the County Court of \_\_\_\_\_, holden at \_\_\_\_\_, I, L. M., solicitor, hereby desire to commence an action for [*state the nature of the suit*], on behalf of [*state name, address, and description of plaintiff*] against [*if the owner or owners be not known, state the owner or owners unknown of the property to which the action relates, describing its name and nature and where it then is: if known, state name, address, and description of party proceeded against, the name and nature of the property to which the suit relates, and where it is*], in the sum of [*state sum in letters*] pounds. And I consent that all instruments and documents in the said action may be left for me at [*state address*], [*add, where so desired*], and I require the summons to be served by the bailiff of the Court].

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18 .

[*To be signed by the party, his solicitor, or his clerk for him.*]

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244.

PRÆCIPUE FOR PERMISSION FOR SUIT TO BE HEARD AT A SPECIAL PLACE.

Admiralty Jurisdiction.

In the County Court of \_\_\_\_\_, holden at \_\_\_\_\_

[*Title of Action.*]

I, X.Z., solicitor, do pray that permission may be granted for the hearing of this suit at [*here state the name of the place at which and description of the building in which it is desired that the sitting should be held, and if the building is not one in which the County Court ordinarily sits, add*], and I undertake to hire the use of the said building at my expense, to be allowed as costs in the suit if the Court shall allow thereof].

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 .

[*To be signed by the party, his solicitor, or his clerk for him.*]



A.D 1875.

245

## SUMMONS.

## Admiralty Jurisdiction.

In the County Court of \_\_\_\_\_, holden at

(Seal.)

Whereas an action for [*state the nature of the action*] has been instituted in this Court, on behalf of *A. B.* of \_\_\_\_\_, against the owner or owners unknown of the [*state description of vessel*], called the [*name of vessel*], (whereof *C. D.* is now or lately was master), [*where action is against owner or owners unknown of vessel and freight add, and the freight due for the transportation of the cargo now or lately laden therein; or, where the action is against the owner or owners unknown of vessel, cargo, and freight, add instead thereof, and the cargo now or lately laden therein, together with the freight due for the transportation thereof*], in the sum of [*state sum in letters*] pounds.

You are hereby summoned to enter an appearance in the said action within four clear days of the service hereof.

You are also warned that, if you do not enter an appearance as aforesaid, the Judge of this Court will proceed to hear and determine the said action, or to make such orders therein as to him shall seem fit.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_  
Registrar of the Court.

To the owner or owners of the [*state description and name of vessel*], and all persons who have or claim to have any right, title, or interest in the said vessel.

N.B.—The solicitor for *A. B.* is \_\_\_\_\_, of [*here state the address given in the præcipe*].

246.

## SUMMONS.

## Admiralty Jurisdiction.

In the County Court of \_\_\_\_\_, holden at

*A. B.*, plaintiff [*address and description*].  
*C. D.*, defendant [*address and description*].

(Seal.)

Whereas an action [*state nature of suit*] has been instituted in this Court on behalf of the plaintiff against you in the sum of [*state sum in letters*] pounds.

You are hereby summoned to enter an appearance in the said action within four clear days of the service hereof.

You are also warned that, if you do not enter an appearance as aforesaid, the Judge of this Court will proceed to hear and determine the said action, or to make such orders therein as to him shall seem fit.

Dated and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_  
Registrar of the Court.

To the defendant.

N.B.—The solicitor for the plaintiff is \_\_\_\_\_ of  
[*here state the address given in the præcipe*].

WARRANT OF ARREST AND DETENTION.

Admiralty Jurisdiction.

In the County Court of \_\_\_\_\_, holden at \_\_\_\_\_.

[Title of Action.] (Seal.)

Whereas an action has been instituted in this Court on behalf of *A. B.* of \_\_\_\_\_, against the owner or owners of [state description and name of vessel or property], in the sum of [state sum in letters] pounds. These are therefore to require and order you to arrest the said \_\_\_\_\_ and to keep the same under safe arrest until you shall receive further orders from this Court.

Given under the seal of the Court this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_.

By the Court. Registrar of the Court.

To the High Bailiff of the said Court, and others the bailiffs thereof.

BAIL BOND.

Admiralty Jurisdiction.

In the County Court of \_\_\_\_\_, holden at \_\_\_\_\_.

[Title of Action.]

Whereas an action for \_\_\_\_\_ has been instituted in this Court on behalf of *A. B.* of \_\_\_\_\_, against \_\_\_\_\_

Now therefore we [state names, addresses, and description of sureties] jointly and severally submit ourselves to the jurisdiction of the said Court, and consent that if he [or they] the said \_\_\_\_\_ shall not pay what may be adjudged against him [or them] in the said action, with costs, execution may issue forth against us, our heirs, executors, and administrators, our goods and chattels, for a sum not exceeding [state sum in letters] pounds.

[Signatures of Sureties.]

The bail bond was signed by the said \_\_\_\_\_, and the sureties, the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_.

Before me, Registrar of the Court, or one of his clerks.

A.D. 1875.

249.

## ORDER OF RELEASE.

## Admiralty Jurisdiction.

In the County Court of \_\_\_\_\_, holden at  
 [Title of Action.] (Seal)

You are hereby authorised and directed to release the  
 now under arrest of this Court by virtue of its warrant, upon the  
 payment of all costs, charges, and expenses attending the custody  
 thereof.

Given under the seal of the Court, this \_\_\_\_\_ of \_\_\_\_\_, 18 .  
 By the Court. Registrar of the Court.

To the High Bailiff of the said Court,  
 and others the bailiffs thereof.

250.

## PRÆCIPUE TO ENTER AN APPEARANCE.

## Admiralty Jurisdiction.

In the County Court of \_\_\_\_\_, holden at \_\_\_\_\_  
 [Title of Action.]

I, R. S., solicitor, hereby enter an appearance on behalf [state name,  
 address, and description of party], in the action for [state nature of  
 action], which has been instituted in this Court on behalf of [state  
 name, address, and description of plaintiff] against [state against whom  
 the action is instituted]. And I consent that all instruments and  
 documents in the action may be left for me at [state address].

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18 .  
 [To be signed by the defendant, his  
 solicitor, or his clerk for him.]

251.

## NOTICE OF HEARING.

## Admiralty Jurisdiction.

In the County Court of \_\_\_\_\_, holden at \_\_\_\_\_  
 [Title of Action.] (Seal)

Take notice that this action will be heard at a Court to be holden  
 on the \_\_\_\_\_ day of \_\_\_\_\_, at [here state where Court is  
 to be held], at the hour of \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon.

Dated and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 18 .  
 Registrar of the Court.

To the plaintiff and defendant.

252.

A.D. 1875.

ORDER OF TRANSFER TO HIGH COURT OF JUSTICE.

Admiralty Jurisdiction.

In the County Court of \_\_\_\_\_, holden at \_\_\_\_\_  
 [Title of Action.] (Seal.)

Whereas it appears that the subject of this action exceeds the limit in respect of the amount of the Admiralty jurisdiction of this Court [or state otherwise, as the case may be], it is ordered that this suit be transferred to the Probate, Divorce, and Admiralty Division of the High Court of Justice, together with the proceedings that have been had therein in this Court.

Given under the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.  
 By the Court. \_\_\_\_\_  
 Registrar of the Court.

253.

ORDER OF TRANSFER TO COUNTY COURT OR THE HIGH COURT OF JUSTICE.

Admiralty Jurisdiction.

In the County Court of \_\_\_\_\_, holden at \_\_\_\_\_  
 [Title of Action.] (Seal.)

Whereas it hath been made to appear that the action could be more conveniently prosecuted in the County Court of \_\_\_\_\_, holden at \_\_\_\_\_, appointed to have Admiralty jurisdiction [or in the High Court of Justice], it is ordered that this action be transferred to the said Court, together with the proceedings that have been had therein in this Court.

Given under the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 187 \_\_\_\_.  
 By the Court. \_\_\_\_\_  
 Registrar of the Court.

254.

JUDGMENT OR ORDER.

Admiralty Jurisdiction.

In the County Court of \_\_\_\_\_, holden at \_\_\_\_\_  
 [Title of Action.] (Seal.)

It is this day adjudged that the plaintiff, *A. B.*, of \_\_\_\_\_, do recover against the defendant [or defendants], *C. D.*, of \_\_\_\_\_, the sum of \_\_\_\_\_ pounds [in an action for salvage, for services rendered to the above vessel; or, in an action for towage, for services rendered in towing the said vessel; or, in an action for necessaries, for necessaries supplied to the said vessel; or, in an action for wages, for wages in respect of services rendered on board the said vessel; or, in an action for damage to cargo, for damage caused to the cargo

A.D. 1875. carried in the said vessel ; or, in an action for damage by collision, for damage caused to the said vessel by the defendant's vessel, the (the description and name of the vessel which caused the damage), together with the costs of this action.

And it is ordered that the defendant [or defendants] do pay the same to the plaintiff or his solicitor within \_\_\_\_\_ days [add, where the name of the defendant is known, and that in default thereof the registrar shall, upon the application of the plaintiff or his solicitor, issue a warrant of execution against the vessel or property of the defendant].

Given under the seal of this Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18 .

By the Court.

Registrar of the Court.

255.

PRÆCIPUE FOR A WARRANT OF EXECUTION.

Admiralty Jurisdiction.

In the County Court of \_\_\_\_\_, holden at \_\_\_\_\_  
[Title of Action.] (Seal.)

I, S. R., solicitor, do require a warrant of execution to issue against the goods of C. D., of \_\_\_\_\_, who was ordered by this Court, on the \_\_\_\_\_ day of \_\_\_\_\_, 18 , to pay to the plaintiff or myself, as his solicitor, the sum of \_\_\_\_\_ pounds for [here insert for what the sum was ordered to be paid], and who has not paid the said sum as so ordered.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18 .  
[Signature of Solicitor.]

256.

WARRANT OF EXECUTION AGAINST THE VESSEL OR PROPERTY OF DEFENDANT.

Admiralty Jurisdiction.

In the County Court of \_\_\_\_\_, holden at \_\_\_\_\_  
[Title of Action.] (Seal.)

Whereas on the \_\_\_\_\_ day of \_\_\_\_\_, 18 , the plaintiff obtained a judgment in this Court against the defendant for the sum of £ \_\_\_\_\_ for \_\_\_\_\_ and costs ; and it was thereupon ordered by the Court that the defendant should pay the same to the plaintiff on the \_\_\_\_\_ day of \_\_\_\_\_.

And whereas default has been made in payment according to the said order. These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the defendant, wheresoever they may be found within the district of this Court (except the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value



A.D. 1875. , he having agreed to pay [or tender] the same in settlement  
 of the claim of the plaintiff [or as the case may be].

Dated the                      day of                      , 18 .  
 [To be signed by the party, his solicitor,  
 or his clerk for him.]

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259.

SUMMONS TO ASSESSORS.

Admiralty Jurisdiction.

In the County Court of                      , holden at                      .  
 [Title of Action.]                      (Seal.)

You are hereby summoned to appear and serve as an assessor in this  
 Court at the                      on the                      day of                      , 18 , at  
 the hour of                      in the                      noon, to assist the Judge of this  
 Court in the hearing and determining of this suit, and in default of  
 attendance you will be liable to a penalty of a sum not exceeding five  
 pounds, under section 15 of the County Courts Admiralty Jurisdiction  
 Act, 1868.

Dated this                      day of                      , 18 .  
 Registrar of the Court.

To                      ,  
 of                      ,

---

260.

ORDER FINING AN ASSESSOR FOR NON-ATTENDANCE.

Admiralty Jurisdiction.

In the County Court of                      , holden at                      .  
 [Title of Action.]                      (Seal.)

Whereas                      was duly summoned to appear and serve as  
 an assessor at a Court holden at                      , on the                      day  
 of                      , 18 , and whereas he has neglected, without sufficient  
 cause shown, to appear and serve as required: It is hereby ordered  
 that he shall forthwith [or on the                      day of                      , 18 ]  
 pay to the registrar of this Court a fine of £                      for such  
 neglect.

Given under the seal of the Court this                      day of                      , 18

By the Court.

Registrar of the Court.

261.

A.D. 1875.

ADMIRALTY ACTIONS BOOK.

*Pro forma.*

DATE.			
Day.	Month.	Year.	
10	Feb.	1869	Action for damage by collision, instituted on behalf of <i>A. B.</i> , of _____, against the owner or owners, unknown, of a schooner, named <i>The Kate</i> , lying at _____, within the district of the Court, in the sum of £200. Solicitor for the plaintiff, <i>Mr. L. M.</i> of _____.
10	Feb.	1869	Application made for arrest; affidavit filed; warrant issued, the evidence being satisfactory.
11	Feb.	1869	Application for judge's permission for suit to be heard at _____.
13	Feb.	1869	Permission granted.
15	Feb.	1869	Appearance entered by <i>C. D.</i> , of _____. Solicitor for defendant, <i>R. S.</i> , of _____.
18	Feb.	1869	The action having been heard the Court decreed that [ <i>here set forth the decree</i> ]. <i>If any further proceedings had, they should be entered in the same manner.</i>

PART IV.

A.D. 1865.

EXTRACT FROM INSTRUCTIONS TO RECEIVERS OF WRECK AND DROIT OF ADMIRALTY PREPARED AND ISSUED BY THE BOARD OF TRADE, 1865.

*Salvage* (p. 27).

81. The decision of questions as to salvage, if the parties cannot be brought to terms, rests, in more important cases, with the High Court of Admiralty in England, the High Court of Admiralty in Ireland, and the Court of Session in Scotland, and in minor cases,—

*Duties of receiver generally with respect to salvage.*

- (a) In England, with two justices, a stipendiary magistrate, or a County Court judge; or
- (b) In Scotland, with two justices, or a stipendiary magistrate, or the sheriff or sheriff substitute of any county; and
- (c) In Ireland, with two justices, a stipendiary magistrate, the recorder of any borough in which there is a recorder, or the chairman of Quarter Sessions in any county.



**A.D. 1865.** The words Court of Session in section 460 of the Act of 1854 mean and include either division of the Court of Session, or the lord ordinary officiating on the bills during vacation.

Summary jurisdiction in cases where the value of the property does not exceed £1000.

**82.** Summary jurisdiction in these minor cases is no longer limited to cases in which the amount claimed as salvage is £200 or under, but by section 49 of "The Merchant Shipping Act Amendment Act, 1862," summary jurisdiction is extended to cases in which *the value of the property saved does not exceed £1000*, whether the salvage services were rendered within the limits of the United Kingdom or not.

Receiver may appoint a valuer in certain cases.

**83.** To determine the value the receiver has power, under section 50 of the Merchant Shipping Act, 1862, to employ a valuer whenever any salvage question arises, if either of the parties apply to him for the purpose. The valuation, when made, is to be signed by the valuer and kept by the receiver. The receiver should make and attest two copies, and hand one to the salvors or their agent and the other to the owners or their agent. These copies may be received in evidence in any subsequent proceedings. Application to the receiver to appoint a valuer should be made in the Form marked Wr. 14. The valuer should be appointed in the Form Wr. 15, and certified copies of the valuation should be furnished in the Form Wr. 16.

Receiver to assist in endeavouring to settle the claims.

**86.** The receiver has important duties to perform in endeavouring to settle salvage claims amicably; in providing for the payment of what may be due by detaining the property saved; in releasing the property on proper security being given; in selling the property when necessary to satisfy the claims of salvors; and in apportioning money paid in satisfaction of such claims amongst the salvors.

Mode of settling salvage claims.

**87.** The receiver will in all cases of salvage claims, and especially in the case of foreign vessels, endeavour at once to settle them amicably, which, as he will have power to detain the property for the settlement of the claims, and as he will, either of his own knowledge or from communication with the coastguard officer, be in possession of the facts of the case, he will have great facilities for doing. If he cannot bring the parties to terms, the dispute must be settled in the manner pointed out by the 460th, 461st, 462nd, 463rd, 464th, and 465th sections of "The Merchant Shipping Act of 1854," and section 49 of "The Merchant Shipping Act Amendment Acts, 1862." In the minor cases referred to in the paragraphs 81 and 82, the officer of the coastguard will always be prepared to give his services as assessor or umpire if required so to do. In cases where the wreck is unclaimed, and any question arises as to salvage, the receiver will, before paying any salvage claims, or referring the matter to be decided at law, report the case, with the claims made and his opinion on them, to the Board of Trade.

Proceedings may be commenced either by owners or salvors.

**88.** The receiver will observe, and will, when necessary, point out to persons interested, that either the owners of property salvaged or their agents can, under the Merchant Shipping Act, 1854, commence proceedings in salvage cases.

Receiver to act impartially.

**89.** In performing the duties required of the receiver in these cases, he will remember that he occupies an independent and quasi judicial position; that it is his especial duty, whilst providing for the claims of *bonâ fide* salvors, and thereby furthering the real interest of all persons interested in trade or shipping, to endeavour, so far as his

powers permit, to protect those interests against vexatious and improper claims. A.D. 1865.

90. The cases in which salvage is payable are stated in the 458th and 459th sections of the Act. Two points require especial notice. Salvage is by the Act made payable for the preservation of human life, and claims on this ground to take priority of all other claims. No rules are or can be laid down as to the amount to be appropriated for this purpose, but courts of law, in determining it, will no doubt be guided by the same principles which govern ordinary salvage cases, so far as those principles are applicable.

Salvage for saving life a charge on the ship.

When the property saved is not sufficient, the Board of Trade has power to grant rewards for saving life out of the Mercantile Marine Fund. But the board will confine its rewards strictly to such cases, and it will be the duty of the receiver in every case in which a claim is made on this ground, or in which he thinks such a claim ought to be made, to make a report to the Board of Trade on Form Wr. 32 (late Wr. 19), stating the circumstances of the case, the value of the property saved after deducting expenses, together with his own opinion on the claim. In making this report, he should communicate with the officer of the coastguard, if any, who has been present, and that officer should join in and sign the report, or state the grounds of his dissent.

Will in some cases be paid by the Board of Trade.

91. The second point to be observed is, that the receiver himself can never be entitled to salvage in respect of "wreck." In cases of assistance rendered to ships in distress and to the persons on board, the Act does not preclude him from such a claim; but it is clear that he cannot claim salvage for any of the duties imposed on him by the Act, for which certain fixed fees are to be paid. It can, therefore, only be in very special cases, where he incurs some risk, or undertakes some labour or expense, altogether beyond the scope of his duties as receiver, that he can make any claim to salvage. No powers which he possesses as receiver must be used to determine or enforce his own claims to salvage. If they are disputed, he must at once report the case to the Board of Trade.

Receiver's claims for salvage.

92. Officers of the coastguard and their men will, if they incur some risk, or undertake some labour beyond the scope of the duties by the Act and by these instructions committed to them (e.g. if they actually put out to sea, and with risk and effort save lives or property from a wrecked vessel), be entitled to salvage in the same manner, and to the same extent, as other salvors. In other cases they will be remunerated as hereinafter mentioned. Exorbitant or improper claims to salvage on the part of any public servants will be uniformly discountenanced by the Board of Trade.

Coastguard claim for salvage.

93. The amount due for salvage depends so much on the circumstances of each case, that it is impossible to do more than call the attention of the receiver to certain general principles which govern these cases. If the receiver is in any difficulty, he should report the case, with the circumstances and his opinion, to the Board of Trade. In settling the amount, he will avail himself of the assistance and knowledge of the coastguard officer of the district or station.

Principles for determining the amount due.

94. The main ingredients of a salvage service are:—

Ingredients of salvage service.

(a.) The degree of danger from which the lives or property are rescued.

A.D. 1865.

- (b.) The value of the property saved.
- (c.) The risk incurred by the salvors.
- (d.) The value of any of the property by the use of which the services are rendered and the danger to which it was exposed.
- (e.) The skill shown in rendering the services.
- (f.) The time and labour occupied.

Where all these concur in the performance of any salvage service the reward ought to be large; and in proportion as fewer of these ingredients are to be found, so should the reward be less. But, where scarcely any or only the last of them exist, the service can hardly be denominated a salvage service; it is little if nothing more than mere work and labour, and should be rewarded accordingly.

Degree of danger.

- (a.) In estimating the degree of danger from which the lives or property were rescued, regard should be had to,—

The damage sustained by the vessel itself;  
 The nature of the locality from which she was rescued;  
 The season of the year when the services were rendered, and, if the weather at the time was not tempestuous, the probability or improbability of its becoming so;  
 Ignorance or knowledge (as the case may be) of the locality on the part of the master and other persons on board the vessel saved.

Value of property saved.

- (b.) The value of the property saved is also an essential ingredient in the amount of remuneration to be awarded. If the value of the property be small, the reward must be small; if large, a greater reward may be given, for, in proportion to that value is the *benefit* to the owners, which is one of the primary considerations in settling the amount of remuneration. The amount of the reward should not, however, increase in direct proportion to the value of the property. The object of the Courts is to give an adequate reward; Courts of Admiralty, therefore, always give a smaller proportion when the property is large.

As a general rule it may be stated that Courts of Admiralty very seldom, if ever, give more than half the value of the property saved. This should, in fact, be regarded as the maximum, except in some few cases where the services have been highly meritorious, and the value of the property saved is but small.

Risks incurred by salvors.

- (c.) The risk incurred by the salvors themselves, if necessarily incidental to the performance of the service, is the most important ingredient in estimating the amount of salvage to be awarded. The value of human life is that which is and ought to be principally considered in the preservation of other men's property: and if this be satisfactorily proved to have been hazarded, the salvors should be most liberally rewarded; and, when not only risk has been incurred, but actual loss of life has ensued, a still larger amount of salvage should be given.

Value of and

- (d.) The value of the property by which the services have been

rendered is not an unimportant element in estimating the reward to be given, provided it has been exposed to risk and danger in the performance of the service. The greater the risk incurred by the salvors or their property, the greater should be the remuneration. It is from the same consideration that no salvage is allowed for the use of her Majesty's ships, or the consumption of stores and articles belonging to her Majesty, as even were the vessel totally lost in rendering the services the loss would not fall on the salvors.

A.D. 1866.  
risk to property used in rendering the salvage service.

- (a.) The skill and knowledge of the salvors is an essential ingredient in a meritorious salvage service. The same skill, however, that would be required from duly licensed pilots, is not to be expected from ordinary smacksmen or boatmen assuming the management of vessels in cases of difficulty; but to entitle such salvors to reward it must be shown that they possessed skill commensurate with their vocation and condition in life, and adequate to the duties they undertook to perform.

Skill shown by salvors.

Where the services have been performed by pilots, care should be taken to ascertain that the services were really of a salvage nature, and that the vessel was actually in distress; for otherwise they must be rewarded merely as pilotage. The rate of remuneration to pilots has, under the provisions of the Pilot Acts, been fixed on a liberal scale, and in return they are bound to afford their assistance in all weathers, except at the risk of their lives. It is, however, a settled doctrine of the Court of Admiralty, that pilots may claim as salvors in circumstances of great danger, or where other than mere pilotage services have been required of them. No pilot is bound to take charge of a vessel in distress for mere pilotage reward; and if he do take charge of a vessel so circumstanced he is entitled to a salvage remuneration. In all such cases, the skill and knowledge possessed by persons of this class fairly entitle them to a liberal reward.

95. When the services also have been rendered by steam vessels, they are always considered as entitled to a very liberal reward, not only on account of the great value of the property which is thereby exposed to risk, but because of the great skill and power of vessels of that description, and the expedition with which services are generally performed by them. Steam vessels are usually fitted out at great expense, and they are so peculiarly adapted to rescue other vessels from positions of great danger, from which no human power could save them, that they are entitled to be liberally rewarded. When, however, an agreement has been made by a steam vessel for the performance of an ordinary towage service, such an agreement should not be lightly set aside on account of any unfavourable change in the weather, or of any trifling circumstance occurring not materially affecting the performance of the stipulated service. If, indeed, it should be discovered that the vessel towed had been damaged previous to the agreement being made, so as materially to increase the difficulty of towing her, and that circumstance had been kept from the knowledge of those in charge of the steam vessel, the agreement would not be binding, and a claim of

Service by steam vessels.

**A.D. 1865.** salvage might be preferred. Agreements, however, should in general be considered as binding on the respective parties; and, if the existence of an agreement be once established, the onus rests upon the party impeaching it to show by a preponderance of evidence that the agreement has been abandoned by consent of both parties, or that the circumstances have so entirely changed as to make a strict performance of the contract a matter of manifest injustice to the one party or the other. But it is no argument on the one side or the other against the validity of such an agreement, that greater or fewer difficulties than were anticipated, in consequence of the change of weather or other circumstances, attended its performance.

Principles on which apportionment is to be made.

97. The principles which regulate the apportionment of a salvage reward amongst the parties entitled thereto are in most cases comparatively simple. The cases which will fall within the cognizance of the receivers will generally be found to belong to one or other of the following classes. Where the salvage services have been rendered,—

- (a.) By revenue cruisers or coastguard men.
- (b.) By smacksmen, boatmen, or fishermen.
- (c.) By landsmen or beachmen.
- (d.) By the master and crew of some vessel.

Revenue cruisers and coastguard.

(a.) As regards the first class of salvors, the revenue cruisers and coastguard men, rules have been laid down for the distribution of rewards of all kinds amongst the officers and men engaged; and the receivers should therefore pay over the whole amount due to the officers and men to the inspecting officer of the division, who will distribute the same under the authority of the comptroller-general of the coastguard. A special report should be made by the inspecting officer in cases where special skill or enterprise has been shown, or special risk incurred by any individual, in order that directions may be issued, if necessary, for giving a special reward.

Smacksmen, boatmen, and fishermen.

(b.) With regard to the second class of salvors, the smacksmen, boatmen, and fishermen, it will generally be found that there is a scale of distribution recognised and agreed upon amongst them; the smack or boat has a certain number of shares, and the remainder belong to the master and crew in certain agreed proportions. Where such a scale exists, it should be strictly adhered to in making an apportionment of salvage, unless indeed any one or more of the men have shown great skill and enterprise or incurred greater risk than the others, when an exception may sometimes be made in their favour. Where, however, salvage has been awarded to the crew of a smack or boat amongst whom there is no such agreed scale of distribution, the receivers will do well in making the apportionment to follow the scale of distribution generally adopted amongst the smacksmen and boatmen in the neighbourhood; as such agreements are generally found to be based upon principles of justice and equity, and are such as best conduce to the interests of the community by whom they have been adopted.

Where a cargo of fish has been spoiled or injured in rendering

the salvage service, care should be taken, in making the apportionment, to ascertain upon whom the loss will fall, and a corresponding allowance should be made to them. A.D. 1865.

- (c.) With regard to the third kind of salvors, beachmen and landamen, it will generally be proper to divide the salvage equally amongst them all. They will probably, in most instances, be found to belong to the same class of life, to have incurred the same risk and the same amount of labour, and to have shown the same skill in the performance of the services. Should any of them have, however, greatly distinguished themselves, it will be proper to give them a larger proportion of the salvage award. Beachmen  
and lands-  
men.

- (d.) The fourth class of case, where the salvage services have been rendered by a vessel and her master and crew, will be found by the receivers to be most difficult, as the apportionment must depend upon a consideration of the whole circumstances of the case, and whether the preservation of the property is due principally to the services of the salving vessel herself, or to the personal exertions and risk incurred by the master or the crew. As a general rule, it may be stated that, where the services have been chiefly performed by the vessel herself, as in the case of a derelict, where the property has been towed into a place of safety, one half of the salvage reward is given to the owners of the salving vessel, from one-fourth to one-eighth to the master, and the remainder amongst the crew in proportion to their wages. This is the scale of distribution usually adopted where the salvage services have been performed by steamers, and where it may generally be said that success is due chiefly to the power and construction of the vessel herself. Where, however, the principal part of the services have not been rendered by the vessel, and where the vessel has not been exposed to any risk or danger, but where the preservation of the property is due in great measure to the personal exertions of the master and crew, then a much smaller portion of the salvage is awarded to the owners of the vessel. It is, however, a question of appreciation, dependent entirely upon the circumstances of each particular case, and in regard to which no positive general rule can be laid down. The greater the risk to the master and crew, and the less the risk to the vessel, the greater must be the proportion awarded to the actual salvors, and the less to the owners of the salving vessel. Vessel and  
her crew.

Finally,—It should be observed that apprentices are entitled to share in an allotment of salvage; and that the master or the owners of the vessel cannot claim the shares which may fall due to their apprentices; and also, that, if a contract giving up or making over any claim to salvage to any person whatever is made by any seaman or apprentice prior to the accruing of such claim, such contract is absolutely void, as being against equity, public policy, and positive enactment. (See Merchant Shipping Act, 1854, ss. 182 and 233.) If, however, a vessel is especially engaged for salvage services and it appears by the terms of the agreement made with the

A.D. 1865.

crew that the ship is to be employed on salvage service, then the crew are only entitled to the remuneration specified in the agreement. (See s. 18 of the Merchant Shipping Act, Amendment Act, 1862.)

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PART V.

RULES OF THE COURT OF ADMIRALTY OF THE CINQUE PORTS.

MADE 26 JUNE, 1875.

A.D. 1875. Whereas it is expedient to amend the practice of the Court of Admiralty of the Cinque Ports, and their members and appurtenances, and to assimilate the same as far as may be practicable to the practice of the High Court of Admiralty of England:

Now I, the Honourable Sir Robert Joseph Phillimore, Knight, Doctor of Laws, Judge Official and Commissary of the said Court of Admiralty of the Cinque Ports, hereby order as follows:—

1. All causes in the said Court shall be instituted in the manner prescribed by the rules, orders, and regulations for the High Court of Admiralty in England in force for the time being, and shall be carried on by petition and answer, and in all respects to termination, conformably to the aforesaid rules, orders, and regulations as far as can be, or the same are applicable to the jurisdiction of the Admiralty of the Cinque Ports, and the same are now hereby varied.

2. The ancient practice of the Court of Admiralty of the Cinque Ports shall continue in force in all cases where the rules, orders, and regulations of the High Court of Admiralty are inoperative or inapplicable to it.

3. The pleadings and proofs shall be printed, unless the judge or his surrogate shall otherwise order.

4. The fees shall be paid as heretofore, in money and not in stamps.

5. The judge or his surrogate shall, in all cases of doubt, from time to time determine and direct the practice of the Court. And for this purpose application may be made by either party to the judge or surrogate at chambers through the registrar.

6. The judge or his surrogate shall have power to direct within what time any pleadings or proofs shall be brought in or filed.

7. The registrar shall be the examiner of the Court.

8. The registrar shall have the power to settle and determine from time to time the fees and expenses to be paid or allowed to the Serjeant of Admiralty.

9. The interpretation clause of the rules, orders, and regulations of the High Court of Admiralty shall be read by substituting the Court of Admiralty of the Cinque Ports for the High Court of Admiralty of England.

10. All serjeants and barristers-at-law, and all proctors, attorneys-at-law, and solicitors, shall be entitled to practice in all causes in the Court of Admiralty of the Cinque Ports.

11. These rules shall come into operation from the date hereof. A.D. 1875.  
Given under my hand, the 26th day June, 1875.

ROBERT PHILLIMORE,  
Judge of the Court of Admiralty of the Cinque Ports.  
EDWARD KNOCKER,  
Registrar, Dover.

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## PART VI

### REGULATIONS FOR PREVENTING COLLISIONS AT SEA, WITH DECISIONS THEREON.

At the Court at Windsor, the 27th day of November, 1880. A.D. 1880.  
Present: The Queen's most excellent Majesty in Council.

Whereas by an order in council made in pursuance of the Merchant Shipping Act Amendment Act, 1862, and dated the 9th day of January, 1863, Her Majesty was pleased to direct:

First, that the regulations contained in the schedule to the said Act should be modified by the substitution for such regulations of certain regulations appended to the said order:

Secondly, that the said regulations appended to the said order should, on and after the first day of June, one thousand eight hundred and sixty-three, apply to French ships, whether within British jurisdiction or not:

And whereas by several orders in council subsequently made, Her Majesty was pleased to direct that the regulations appended to the said recited order should apply to ships of the countries specified in the said orders, whether within British jurisdiction or not:

And whereas by order in council, dated the thirtieth day of July, one thousand eight hundred and sixty-eight, Her Majesty was pleased to make certain additions to the regulations appended to the said first-recited order in council:

And whereas by order in council, dated the fourteenth day of August, one thousand eight hundred and seventy-nine, Her Majesty, on the joint recommendation of the Admiralty and the Board of Trade, was pleased to direct that, on and after the first day of September, one thousand eight hundred and eighty, the said regulations and the additions thereto should be annulled, and that there should be substituted therefor the new regulations contained in the first schedule thereto, and that the same should, from and after the first day of September, one thousand eight hundred and eighty, apply to ships belonging to the following countries; that is to say,

Austria-Hungary,	Italy,
Belgium,	Netherlands,
Chili,	Norway,
Denmark,	Portugal,
France,	Russia,
Germany,	Spain,
Great Britain,	Sweden, and
Greece,	United States,

whether within British jurisdiction or not:



A.D. 1880. And whereas by order in council, dated the twenty-fourth day of March, one thousand eight hundred and eighty, Her Majesty, on the joint recommendation of the Admiralty and the Board of Trade, was pleased to direct that the operation of the article numbered 10 of the new regulations contained in the first schedule of the said order in council of the fourteenth day of August, one thousand eight hundred and seventy-nine, should be suspended until the first day of September, one thousand eight hundred and eighty one, and that, in lieu thereof, and in substitution therefor, the article numbered 9 of the regulations appended to the said order in council of the ninth day of January, one thousand eight hundred and sixty-three, should continue and remain in force until the said first day of September, one thousand eight hundred and eighty-one :

And whereas by order in council, dated the sixth day of September, one thousand eight hundred and eighty, Her Majesty, on the joint recommendation of the Admiralty and the Board of Trade, was pleased to direct that, from and after the first day of September, one thousand eight hundred and eighty, the said new regulations for preventing collisions at sea contained in the first schedule of the said recited order in council of the fourteenth day of August, one thousand eight hundred and seventy-nine, should, with the exception of the article 10 thereof, apply to ships belonging to the following countries ; that is to say,

Cochin,	Muscat,
Kattyawar,	Travancore, and
Khelat,	Zanzibar,
Kutch,	

whether within British jurisdiction or not :

And whereas it has been made to appear to Her Majesty that the governments of the several foreign countries hereinafter mentioned ; that is to say,

The Government of Brazil,
” ” Ecuador,
” ” Hawaii,
” ” Japan, and
” ” Turkey,

are respectively willing that, from and after the first day of September, one thousand eight hundred and eighty, the said new regulations for preventing collisions at sea, a copy whereof is hereunto appended, contained in the first schedule of the said recited order in council of the fourteenth day of August, one thousand eight hundred and seventy-nine, shall, subject to the provisions of the said recited order in council of the twenty-fourth day of March, one thousand eight hundred and eighty, apply to ships belonging to their respective countries when beyond the limits of British jurisdiction :

And whereas the said Government of Japan is desirous that article numbered 12 of the said regulations should, as applied to Japanese ships, be modified as follows, viz. that it shall not be necessary for the fog horn by the said article required to be provided and used on board steam and sailing ships as a sound signal for fog, &c., to be sounded by a bellows or other mechanical means when the same is carried on board ships belonging to Japan :

And whereas the said Government of Turkey is desirous that the said article numbered 12 of the said regulations shall, as applied to Turkish ships, be modified as follows, viz that, in lieu of and in substitution for the bell required by the said article to be provided and used as a sound signal for fog, &c., there may be placed and kept on board Turkish ships an efficient drum which shall be sounded under the same circumstances and at the same intervals as by the said article a bell is required to be rung: A.D. 1880.

Now, therefore, Her Majesty, by virtue of the powers vested in her by the said recited Act, and by and with the advice of her Privy Council, is pleased to direct:

That, from and after the first day of September, one thousand eight hundred and eighty, the said new regulations for preventing collisions at sea, a copy whereof is hereunto appended, contained in the first schedule of the said recited order in council of the fourteenth day of August, one thousand eight hundred and seventy-nine, shall, subject to the provisions of the said recited order in council of the twenty-fourth day of March, one thousand eight hundred and eighty, apply to ships belonging to the following countries, that is to say,

Brazil,	Japan, and
Ecuador,	Turkey,
Hawaii,	

whether within British jurisdiction or not:

Provided, however, that as regards (1) Japanese and (2) Turkish ships, the article numbered 12 of the said regulations shall be modified as follows, viz:

(1) It shall not be necessary for the fog horn by the said article required to be provided and used on board steam and sailing ships as a sound signal for fog, &c., to be sounded by a bellows or other mechanical means when the same is carried on board ships belonging to Japan;

And (2) It shall not be necessary for the bell required by article numbered 12 of the said regulations to be provided and used on board steam and sailing ships as a sound signal for fog, &c., to be placed and kept on board Turkish ships, but that, in lieu thereof and in substitution therefor, there may be placed and kept on board such Turkish ships an efficient drum which shall be sounded under the same circumstances and at the same intervals as by the said article a bell is required to be rung.

C. L. PEEL.

1863. 1880. REGULATIONS FOR PREVENTING COLLISIONS AT SEA REFERRED TO IN THE FOREGOING ORDER.

*Preliminary (a).*

- (1.) Art. 1. In the following rules every steam ship which is under sail and not under steam is to be considered a sailing ship; and every steam ship which is under steam, whether under sail or not, is to be considered a ship under steam. *The Jennie S. Barker*, L. R. 4 Ad. 456; 44 L. J. Ad. 20.

*Rules concerning Lights.*

- (2.) Art. 2. The lights mentioned in the following articles, numbered 3, 4, 5, 6, 7, 8, 9, 10, and 11, and no others, shall be carried in all weathers, from sunset to sunrise: *The Anglo Indian*, 33 L. T. N. S. 233; 23 W. R. 882.
- (3.) Art. 3. A seagoing steam ship when under way shall carry,—
- (a.) On or in front of the foremast, at a height above the hull of not less than 20 feet, and if the breadth of the ship exceeds 20 feet then at a height above the hull not less than such breadth, a bright white light, so constructed as to show an uniform and unbroken light over an arc of the horizon of 20 points of the compass; so fixed as to throw the light 10 points on each side of the ship, viz. from right ahead to two points abaft the beam on either side; and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least five miles.
- (b.) On the starboard side, a green light so constructed as to show an uniform and unbroken light over an arc of the horizon of 10 points of the compass; so fixed as to throw the light from right ahead to 2 points abaft the beam on the starboard side; and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles.
- (c.) On the port side a red light, so constructed as to show an uniform and unbroken light over an arc of the horizon of 10 points of the compass; so fixed as to throw the light from right ahead to 2 points abaft the beam on the port side; and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles.
- (d.) The said green and red side lights shall be fitted with in-board screens projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow.
- (4.) Art. 4. A steam ship, when towing another ship, shall in addition to her side lights, carry two bright white lights in a vertical line one
- (a) The numbers in parentheses in the margin are the numbers of the Regulations of 1863 which correspond with those of 1880. The cases referred to have either been decided on the rules of 1863 which under different numbers are still in force, or on the new rules.

over the other, not less than three feet apart, so as to distinguish her from other steam ships. Each of these lights shall be of the same construction and character, and shall be carried in the same position, as the white light which other steam ships are required to carry. 1863. 1880.

Art. 5. A ship, whether a steam ship or a sailing ship, when employed either in laying or in picking up a telegraph cable, or which from any accident is not under command, shall at night carry, in the same position as the white light which steam ships are required to carry, and, if a steam ship, in place of that light, three red lights in globular lanterns, each not less than 10 inches in diameter, in a vertical line one over the other, not less than three feet apart: and shall by day carry in a vertical line one over the other, not less than three feet apart, in front of but not lower than her foremast head, three black balls or shapes, each two feet in diameter.

These shapes and lights are to be taken by approaching ships as signals that the ship using them is not under command, and cannot therefore get out of the way.

The above ships, when not making any way through the water, shall not carry the side lights, but when making way shall carry them. (*A new regulation.*)

Art. 6. A sailing ship under way, or being towed, shall carry the same lights as are provided by Article 3 for a steam ship under way, with the exception of the white light, which she shall never carry: *The Esk and The Gitana*, L. R. 2 Ad. 350; 38 L. J. Ad. 33; *The Mary Hounsel*, L. R. 4 P. D. 204; 48 L. J. Ad. 54. (5.)

Art. 7. Whenever, as in the case of small vessels during bad weather, the green and red side lights cannot be fixed, these lights shall be kept on deck, on their respective sides of the vessel, ready for use: and shall on the approach of or to other vessels be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side nor the red light on the starboard side. (6.)

To make the use of these portable lights more certain and easy, the lanterns containing them shall each be painted outside with the colour of the light they respectively contain, and shall be provided with proper screens.

Art. 8. A ship, whether a steam ship or a sailing ship, when at anchor, shall carry, where it can best be seen, but at a height not exceeding 20 feet above the hull, a white light, in a globular lantern of not less than eight inches in diameter, and so constructed as to show a clear, uniform and unbroken light visible all round the horizon, at a distance of at least one mile: *The C. M. Palmer*, 29 L. T. N. S. 120; 2 Asp. M. C. 94. (7.)

Art. 9. A pilot vessel, when engaged on her station on pilotage duty, shall not carry the lights required for other vessels, but shall carry a white light at the masthead, visible all round the horizon, and shall also exhibit a flare-up light or flare-up lights at short intervals, which shall never exceed fifteen minutes: *The Mary Hounsel*, L. R. 4 P. D. 204; 48 L. J. Ad. 54. (8.)

A pilot vessel, when not engaged on her station on pilotage duty, shall carry lights similar to those of other ships.

Art. 10. *By the order in council of 26th August, 1881, the opera-*

**1863. 1890.** *tion of Art. 10 of the new Regulations for preventing Collisions at Sea sanctioned by the order in council of the 14th August, 1879, has been suspended until the 1st September, 1882, and the following article, Article 9 of the old Regulations of 1863, remains in force till that date :*

Open fishing boats and other open boats shall not be required to carry the side lights required for other vessels ; but shall, if they do not carry such lights, carry a lantern having a green slide on the one side and a red slide on the other side ; and on the approach of or to other vessels, such lantern shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side, nor the red light on the starboard side.

Fishing vessels and open boats when at anchor, or attached to their nets and stationary, shall exhibit a bright white light.

Fishing vessels and open boats shall, however, not be prevented from using a flare-up in addition, if considered expedient : *The Edith*, 10 Ir. Rep. Eq. 345 (C. A.) ; *The Englishman*, L. R. 3 P. D. 18 ; 37 L. T. N. S. 412.

Art. 11. A ship which is being overtaken by another shall show from her stern to such last mentioned ship a white light or a flare-up light. (*A new regulation.*)

#### *Sound Signals for Fog, &c.*

- (10.) Art. 12. A steam ship shall be provided with a steam whistle or other efficient steam sound signal, so placed that the sound may not be intercepted by any obstructions, and with an efficient fog horn to be sounded by bellows or other mechanical means, and also with an efficient bell (a). A sailing ship shall be provided with a similar fog horn and bell : *The Milanese*, 43 L. T. 107.

In fog, mist, or falling snow, whether by day or night, the signals described in this article shall be used as follows ; that is to say,

- (a.) A steam ship under way shall make with her steam whistle, or other steam sound signal, at intervals of not more than two minutes, a prolonged blast.
- (b.) A sailing ship under way shall make with her fog horn, at intervals of not more than two minutes, when on the starboard tack one blast, when on the port tack two blasts in succession, and when with the wind abaft the beam three blasts in succession : *The Love Bird*, L. R. 6 P. D. 80.
- (c.) A steam ship and a sailing ship when not under way shall, at intervals of not more than two minutes, ring the bell.

(*This regulation is stricter and more extensive than the corresponding one of 1863.*)

#### *Speed of Ships to be moderate in Fog, &c.*

Art. 13. Every ship, whether a sailing ship or steam ship, shall, in a fog, mist, or falling snow, go at a moderate speed : *The Pennsylvania*, 23 L. T. N. S. 55.

- (a) In all cases where the regulations require a bell to be used, a drum will be substituted on board Turkish vessels.

*Steering and Sailing Rules.*

1863. 1890.

Art. 14. When two sailing ships are approaching one another, so as to involve risk of collision, one of them shall keep out of the way of the other, as follows, viz. :— (11.) (12.)

- (a.) A ship which is running free shall keep out of the way of a ship which is close-hauled: *The Peckforton Castle*, L. R. 2 P. D. 222; L. R. 3 P. D. (C. A.) 1.
- (b.) A ship which is close-hauled on the port tack shall keep out of the way of a ship which is close-hauled on the starboard tack: *The Rosalie*, L. R. 5 P. D. 245.
- (c.) When both are running free with the wind on different sides, the ship which has the wind on the port side shall keep out of the way of the other.
- (d.) When both are running free with the wind on the same side, the ship which is to windward shall keep out of the way of the ship which is to leeward.
- (e.) A ship which has the wind aft shall keep out of the way of the other ship: *The Spring*, L. R. 1 Ad. 99; 14 W. R. 975.

(*This regulation is new in form.*)

Art. 15. If two ships under steam are meeting end on, or nearly end on, so as to involve risk of collision, each shall alter her course to starboard, so that each may pass on the port side of the other: *The Jesmond* and *The Earl of Elgin*, L. R. 4 P. C. 1; 8 Moo. P. C. N. S. 179; *The Concordia*, L. R. 1 Ad. 93; 14 L. T. N. S. 896. (13.)

This article only applies to cases where ships are meeting end on, or nearly end on, in such a manner as to involve risk of collision, and does not apply to two ships which must, if both keep on their respective courses, pass clear of each other.

The only cases to which it does apply are, when each of the two ships is end on, or nearly end on, to the other; in other words, to cases in which, by day, each ship sees the masts of the other in a line, or nearly in a line, with her own; and by night, to cases in which each ship is in such a position as to see both the side lights of the other.

Art. 16. If two ships under steam are crossing, so as to involve risk of collision, the ship which has the other on her own starboard side shall keep out of the way of the other: *The Ranger* and *The Cologne*, L. R. 4 P. C. 519; 27 L. T. N. S. 769; *The Concordia*, L. R. 1 Ad. 93; 14 L. T. N. S. 896; *The Nor*, 30 L. T. N. S. P. C. 576; *The Ada*, 28 L. T. N. S. P. C. 825; *The Chanonry*, 42 L. J. Ad. 58; 28 L. T. N. S. 284; *The Velocity*, L. R. 3 P. C. 44; 39 L. J. Ad. 20; *The Franconia*, L. R. 2 P. D. 8; 37 L. T. N. S. 721; *The Oceano*, L. R. 3 P. D. 60 (Thames Rules). (14.)

Art. 17. If two ships, one of which is a sailing ship, and the other a steam ship, are proceeding in such directions as to involve risk of collision, the steam ship shall keep out of the way of the sailing ship: *The Jennie S. Barker*, L. R. 4 Ad. 226; 44 L. J. Ad. 20; *The American* and *Syria*, L. R. 4 Ad. 226; *The Warrior*, L. R. 3 Ad. 532; 27 L. T. N. S. 101; *The Norma*, 35 L. T. N. S. 418. (15.)

Art. 18. Every steam ship, when approaching another ship, so as (16.)

1863. 1880. to involve risk of collision, shall slacken her speed or stop and reverse, if necessary : *The Jesmond* and *Earl of Elgin*, L. R. 4 P. C. 1 ; 8 Moo. P. C. N. S. 179 ; *The Norma*, 35 L. T. N. S. 418 ; *The Frankland*, L. R. 4 P. C. 529 ; 27 L. T. N. S. 43.

Art. 19. In taking any course authorized or required by these Regulations, a steam ship under way may indicate that course to any other ship which she has in sight by the following signals on her steam whistle, viz,—

One short blast to mean "I am directing my course to starboard" :

Two short blasts to mean "I am directing my course to port" :

Three short blasts to mean "I am going full speed astern."

The use of these signals is optional ; but, if they are used, the course of the ship must be in accordance with the signal made.

(*This regulation is new.*)

(17.) Art. 20. Notwithstanding anything contained in any preceding article, every ship, whether a sailing ship or a steam ship, overtaking any other shall keep out of the way of the overtaken ship : *The Chanonry*, 42 L. J. Ad. 58 ; 28 L. T. N. S. 284 ; *The Earl Spencer*, L. R. 4 Ad. 431 ; 33 L. T. N. S. 23.

Art. 21. In narrow channels every steam ship shall, when it is safe and practicable, keep to that side of the fairway or mid-channel which lies on the starboard side of such ship.

(18.) Art. 22. Where by the above rules one of two ships is to keep out of the way, the other shall keep her course : *The Aimo* and *Amelia*, 29 L. T. N. S. 118 ; *The Spring*, L. R. 1 Ad. 99 ; 14 W. R. 975 ; *The William Frederick*, L. R. 4 App. Cas. 669 ; 41 L. T. 535 ; *The Warrior*, L. R. 3 Ad. 533 ; 27 L. T. N. S. 101.

(19.) Art. 23. In obeying and construing these rules due regard shall be had to all dangers of navigation, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger : *The American* and *Syria*, L. R. 6 P. C. 127 ; 43 L. J. Ad. 30 ; *The Ada*, 28 L. T. N. S. P. C. 825 ; *The Warrior*, L. R. 3 Ad. 533 ; 27 L. T. N. S. 101.

*No ship, under any Circumstances, to neglect proper Precautions.*

(20.) Art. 24. Nothing in these rules shall exonerate any ship, or the owner, or master, or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper look-out, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case : *The John Fenwick*, L. R. 3 Ad. 500 ; 41 L. J. Ad. 38 ; *The American* and *Syria*, L. R. 6 P. C. 127 ; 43 L. J. Ad. 30 ; *The Thomas Lea*, 35 L. T. N. S. 406 ; *The Philotaxe*, 37 L. T. N. S. 540.

*Reservation of Rules for Harbours and Inland Navigation.*

Art. 25. Nothing in these rules shall interfere with the operation of a special rule, duly made by local authority, relative to the navigation of any harbour, river, or inland navigation.

*Special Lights for Squadrons and Convoys.*1880.

Art. 26. Nothing in these rules shall interfere with the operation of any special rules made by the Government of any nation with respect to additional station and signal lights for two or more ships of war or for ships sailing under convoy.

## SCHEDULES (M. S. A. 1873).

## SCHEDULE I.

*Signals of Distress.*

In the daytime, the following signals, numbered 1, 2, and 3, when used or displayed together or separately, shall be deemed to be signals of distress in the daytime:—

1. A gun fired at intervals of about a minute :
2. The international code signal of distress indicated by N C :
3. The distant signal, consisting of a square flag having either above or below it a ball or anything resembling a ball.

At night, the following signals, numbered 1, 2, and 3, when used or displayed together or separately, shall be deemed to be signals of distress at night :—

1. A gun fired at intervals of about a minute :
2. Flames on the ship (as from a burning tar barrel, oil barrel, &c.):
3. Rockets or shells of any colour or description fired at one time, at short intervals.



# APPENDIX IV.

## STATUTORY FORMS.

### FORMS.

The forms marked with an asterisk (\*) are those annexed to the rules for the High Court of Admiralty, made in pursuance of the Acts of 3 & 4 Vict. cc. 65 and 66, and 17 & 18 Vict. c. 78, approved and confirmed by the Queen in Council, 29th November, 1855, and 24th March, 1871, and which are still in force. Those marked (J. A.) are such as will be found in the schedules to the Judicature Acts, but the forms of April, 1880, have not been added to this edition. They are very numerous, and can be found in any work on practice generally, and do not apply specially to this division. It has been thought well, however, to retain the Judicature forms which appeared in the first edition.

### PART I.

#### (a) APPENDIX (A).

(J. A.)

#### FORMS OF WRITS OF SUMMONS IN PERSONAM.

No. 1.

188 . [*Here put the letter and number.*]

In the High Court of Justice,  
Division.

Between *A. B.*, plaintiff,  
and  
*C. D.* and *E. F.*, defendants.

Victoria, by the grace of God, &c.

To *C. D.*, of \_\_\_\_\_, in the county of \_\_\_\_\_, and *E. F.*, of \_\_\_\_\_.

We command you, that within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the \_\_\_\_\_ Division of our High Court of Justice, in an action at the suit of *A. B.*; and take

(a) This and the succeeding subordinate headings and figures refer to Schedule to the Judicature Acts.

notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence. Witness, &c.

*Memorandum to be subscribed on the writ.*

N.B.—This writ is to be served within (*twelve*) calendar months from the date thereof, or, if renewed, from the date of such renewal, including the day of such date, and not afterwards.

The defendant [*or defendants*] may appear hereto by entering an appearance [*or appearances*] either personally or by solicitor at the [ ] office at

*Indorsements to be made on the writ before issue thereof.*

The plaintiff's claim is for, &c.

This writ was issued by *E. F.*, of [ ], solicitor for the said plaintiff, who resides at [ ], or, this writ was issued by the plaintiff in person, who resides at [mention the city, town, or parish, and also the name of the street and number of the house of the plaintiff's residence, if any].

*Indorsement to be made on the writ after service thereof.*

This writ was served by *X. Y.* on *L. M.* [the defendant, or one of the defendants], on *Monday*, the [ ] day of [ ], 18 [ ] (Signed) *X. Y.*

No. 2.

*Writ for Service out of the Jurisdiction, or where Notice in lieu of Service is to be given out of the Jurisdiction.*

188 [Here put the letter and number.]

In the High Court of Justice,  
Division.

Between *A. B.*, plaintiff,  
and

*C. D.* and *E. F.*, defendants.

Victoria, by the grace of God, &c.

To *C. D.*, of

We command you, *C. D.*, that within [*here insert the number of days directed by the Court or Judge ordering the service or notice*] after the service of this writ [*or notice of this writ, as the case may be*] on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the [ ] Division of our High Court of Justice in an action at the suit of *A. B.*; and take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence. Witness, &c.

*Memoranda and Indorsements as in Form No. 1.*

*Indorsement to be made on the writ before the issue thereof.*

N.B.—This writ is to be used where the defendant or all the defendants or one or more defendant or defendants is or are out of the jurisdiction.

(A.)

*Writ of Summons in Admiralty Action in Rem.*188 . [*Here put the letter and number.*]In the High Court of Justice,  
Admiralty Division.

— District Registry (a).

Between *A. B.*, plaintiff,  
and

The Owners of the \_\_\_\_\_, defendants.

Victoria, by the grace of God, &amp;c.

To the owners and parties interested in the ship or vessel  
of the port of \_\_\_\_\_ [*or cargo, &c., as the case may be.*]

We command you, that within eight days after the service of this writ, inclusive of the day of such service, you do cause an appearance to be entered for you [in the Admiralty Division of our High Court of Justice] (b) in an action at the suit of *A. B.*; and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence. Witness, Hugh MacCalmont, Baron Cairns, Lord High Chancellor of Great Britain, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_.

*Memorandum to be subscribed on the Writ.*

N.B.—This writ is to be served within [twelve] calendar months from the date thereof, or, if renewed, from the date of such renewal, including the day of such date, and not afterwards.

The defendant [*or defendants*] may appear hereto by entering an appearance [*or appearances*] either personally or by solicitor at the [ \_\_\_\_\_ ] office at \_\_\_\_\_ (c).

*Indorsements to be made on the Writ before issue thereof.*

The plaintiff's claim is for, &amp;c.

This writ was issued by *E. F.*, of \_\_\_\_\_, solicitor for the said plaintiff, who resides at \_\_\_\_\_, or, this writ was issued by the plaintiff in person, who resides at \_\_\_\_\_ [mention the city, town, or parish, and also the name of the street and number of the house of the plaintiff's residence, if any].

*Indorsement to be made on the Writ after service thereof.*

This writ was served by *X. Y.* [*here state the mode in which the service was effected, whether on the owner, or on the ship, cargo, or freight, according to Order IX., Rules 10, 11, and 12, as the case may be*] on the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_.

(Signed) \_\_\_\_\_ *X. Y.*

(a) Form 4 b, for service from District Registry, adds these words.

(b) 4 b omits these words.

(c) 4 b adds: "A defendant who resides or carries on business within the above named district must enter an appearance at the office of that district. A defendant who neither resides nor carries on business within the said district may enter an appearance either at the office of the said registrar or at the central office."

No. 3 (a).

(J. A.)

*Notice of Writ in lieu of Service, to be given out of the Jurisdiction.*

188 . [Here put the letter and number.]

Between *A. B.*, plaintiff,  
and  
*C. D.*, *E. F.*, and *G. H.*, defendants.

To *G. H.*, of

Take notice that *A. B.*, of \_\_\_\_\_, has commenced an action against you, *G. H.*, in the Admiralty Division of Her Majesty's High Court of Justice in England, by writ of that Court, dated the day of \_\_\_\_\_, A.D. 18\_\_\_\_; which writ is indorsed as follows [copy in full the indorsements], and you are required within \_\_\_\_\_ days after the receipt of this notice, inclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the said Court to the said action; and, in default of your so doing, the said *A. B.* may proceed therein, and judgment may be given in your absence.

You may appear to the said writ by entering an appearance personally or by your solicitor at the [ \_\_\_\_\_ ] office at

(Signed) *A. B.*, of \_\_\_\_\_ *etc.*

or

In the High Court of Justice, *X. Y.*, of \_\_\_\_\_ *etc.*  
Division. Solicitor for *A. B.*

No. 5.

(J. A.)

*Form of Memorandum for Renewed Writ.*

In the High Court of Justice,  
Division.

Between *A. B.*, plaintiff,  
and  
*C. D.*, defendant.

Seal renewed writ of summons in this action indorsed as follows :—  
[Copy original writ and the indorsements.]

(a) A slightly different form is used in District Registries.



5. The plaintiff claims possession of the vessel *Mary*, of the port of \_\_\_\_\_, as owner of 48-64th shares of the said vessel against *C. D.*, owner of 16-64th shares of the said vessel.

6. The plaintiff as part owner of the vessel *Mary* claims against *C. D.*, part owner and his \_\_\_\_\_ shares in the said vessel £ \_\_\_\_\_ as part of the earnings of the said vessel due to plaintiff.

7. The plaintiff as owner of 48-64th shares of the vessel *Mary*, of the port of \_\_\_\_\_, claims possession of the said brig as against *C. D.* the master thereof.

8. The plaintiff under a mortgage, dated the \_\_\_\_\_ day of \_\_\_\_\_, claims against the vessel *Mary*, £ \_\_\_\_\_, being the amount of his mortgage thereon, and £ \_\_\_\_\_ for interest.

10. *By a part owner of a vessel.*

The plaintiff as owner of 24-64th shares of the vessel *Mary*, being dissatisfied with the management of the said vessel by his co-owners, claims that his co-owners shall give him a bond in £ \_\_\_\_\_ for the value of the plaintiff's said shares in the said vessel.

11. The plaintiffs as owners of the derelict vessel *Mary*, of the port of \_\_\_\_\_, claim to be put in possession of the said vessel and her cargo.

*By a bottomry bondholder.*

(a) 9. The plaintiff as assignee of a bottomry bond, dated the day of \_\_\_\_\_, and granted by *C. D.* as master of the vessel *Mary*, of the port of \_\_\_\_\_, to *A. B.*, at St. Thomas's in the West Indies, claims £ \_\_\_\_\_ against the vessel *Mary* and the cargo laden thereon.

12. *By Salvors.*

The plaintiffs as the owners, master, and crew of the vessel *Caroline*, of the port of \_\_\_\_\_, claim the sum of £ \_\_\_\_\_ for salvage services performed by them to the vessel *Mary* off the Goodwin Sands, on the \_\_\_\_\_ day of \_\_\_\_\_.

13. *Claim for Towage.*

The plaintiffs as owners of the steam-tug *Jane*, of the port of \_\_\_\_\_, claim £ \_\_\_\_\_ for towage services performed by the said steam-tug to the vessel *Mary* on the \_\_\_\_\_ day of \_\_\_\_\_.

14. *Seaman's Wages.*

The plaintiffs as seamen on board the vessel *Mary* claim £ \_\_\_\_\_ for wages due to them, as follows (1), the mate £30 for two months' wages from the \_\_\_\_\_ day of \_\_\_\_\_.

15. *For Necessaries.*

The plaintiffs claim £ \_\_\_\_\_ for necessaries supplied to the vessel *Mary* at the port of Newcastle-on-Tyne, delivered on the day of \_\_\_\_\_ and the \_\_\_\_\_ day of \_\_\_\_\_.

(b) The plaintiff's claim is for damages for injury to the plaintiff [*or, Negligence. if by husband and wife, to the plaintiff C. D.*] by \_\_\_\_\_.

(a) This form is thus numbered in the Judicature Acts, but it is clearly wrongly placed among the indorsements for possession of a ship, and has in this list been placed in proper order.

(b) The following indorsements are taken from App. A, Pt. II, s. 4, of the Judicature forms, with such alterations as make them applicable to Admiralty actions.

The plaintiffs as owners of the Falmouth breakwater claim £ against the ship *Uhla* for damage done to the said breakwater by the said ship in the month of June last.

The plaintiff's claim is for damages against the steamship *Sylph* for injury to the plaintiff in the River Mersey, in the month of May last, by the negligent navigation of the said steamship.

Lord  
Campbell's  
Act.

The plaintiff's claim is as executor of *A. B.* deceased, for damages for the death of the said *A. B.*, against the vessel *Franconia*, and loss of his goods caused by a collision with the ship *Strathclyde*, which took place in the Straits of Dover in the month of February last.

(J. A.)

SECTION VIII.

*Indorsements of Character of Parties.*

The plaintiff's claim is as executor [*or administrator*] of *C. D.*, deceased, for, &c.

The plaintiff's claim is against the defendant *A. B.*, as executor [*or, &c.*] of *C. D.* deceased, for, &c.

The plaintiff's claim is against the defendant *A. B.*, as executor of *X. Y.*, deceased, and against the defendant *C. D.*, in his personal capacity, for, &c.

By husband  
and wife,  
executrix.

The claim of the plaintiff *C. D.* is as executrix of *X. Y.*, deceased, and the claim of the plaintiff *A. B.* as her husband, for

Against  
husband  
and wife,  
executrix.

The claim of the plaintiff is against the defendant *C. D.*, as executrix of the defendant *C. D.*, deceased, and against the defendant *A. B.*, as her husband, for

Trustee in  
bankruptcy.

The plaintiff's claim is as trustee under the bankruptcy of *A. B.*, for

Trustees.

The plaintiff's claim is against the defendant as trustee under the bankruptcy of *A. B.*, for

The plaintiff's claim is as [*or the plaintiff's claim is against the defendant as*] trustee under the will of *A. B.* [*or under the settlement upon the marriage of A. B. and X. Y., his wife*].

Public  
officer.

The plaintiff's claim is as public officer of the bank, for

The plaintiff's claim is against the defendant as public officer of the bank, for

The plaintiff's claim is against the defendant *A. B.* as principal, and against the defendant *C. D.* as public officer of the bank, as surety, for

Qui tam  
action.

The plaintiff's claim is as well for the Queen as for himself, for

(A.)

*Warrant of Arrest in Admiralty Action in Rem.*188 . [*Here put the letter and number.*]In the High Court of Justice,  
Admiralty Division.Between A. B., Plaintiff,  
and  
The Owners of the  
Victoria, &c.To the Marshal of the Admiralty Division of Our High Court of Justice, and to all and singular his substitutes [*or, To the Collector or Collectors of Customs at the Port of* ]

We hereby command you to arrest the ship or vessel of the port of [and the cargo and the freight, &amp;c., as the case may be], and to keep the same under safe arrest until you shall receive further orders from us.

Witness, Hugh MacCalmont, Baron Cairns, Lord High Chancellor of Great Britain, this day of , 18 .

*Indorsement on Warrant of Arrest.*On the day of , 188 , the within-named or vessel, lying arrested by affixing this original warrant for a short time on the mast of the said vessel, and, on taking off the process, by leaving a copy thereof fixed in its place.  
Indorsed by me this day of 188 .

## APPENDIX (B).

(J. A.)

FORM 5.

*Notice of Payment into Court.*In the High Court of Justice, 1882. B. No.  
Admiralty Division.

A. B. v. C. D.

Take notice that the defendant has paid into Court £ , and says that that sum is enough to satisfy the plaintiff's claim [*or the plaintiff's claim for, &c.*].To Mr. X. Y.,  
The plaintiff's solicitor.Z.,  
Defendant's solicitor.



## FORM 6.

*Acceptance of Sum paid into Court.*

In the High Court of Justice, 1882. B. No.  
Admiralty Division.

*A. B. v. C. D.*

Take notice that the plaintiff accepts the sum of £ , paid by you into Court, in satisfaction of the claim in respect of which it is paid in.

## FORM 7.

*Form of Interrogatories.*

In the High Court of Justice, 1882. B. No.  
Admiralty Division.

Between *A. B.*, Plaintiff,  
and

*C. D.*, *E. F.*, and *G. H.*, Defendants.

Interrogatories on behalf of the above-named [plaintiff, or defendant *C. D.*] for the examination of the above-named [defendants *E. F.* and *G. H.*, or plaintiff].

1. Did not, &c.
2. Has not, &c.

&c. &c. &c.

[The defendant *E. F.* is required to answer the interrogatories numbered .]

[The defendant *G. H.* is required to answer the interrogatories numbered .]

## FORM 8.

*Form of Answer to Interrogatories.*

In the High Court of Justice, 1882. B. No.  
Admiralty Division.

Between *A. B.*, Plaintiff,  
and

*C. D.*, *E. F.*, and *G. H.*, Defendants.

The answer of the above-named defendant *E. F.* to the interrogatories for his examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named *E. F.*, make oath and say as follows :—

## FORM 9.

*Form of Affidavit as to Documents.*

In the High Court of Justice, 1882. B. No.  
Admiralty Division.

Between *A. B.*, Plaintiff,  
and

*C. D.*, Defendant.

I, the above-named defendant *C. D.*, make oath and say as follows :—

1. I have in my possession or power the documents relating to the

matters in question in this suit set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the said first schedule hereto.

3. That [*here state upon what grounds the objection is made, and verify the facts as far as may be*].

4. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

5. The last-mentioned documents were last in my possession or power on [*state when*].

6. That [*here state what has become of the last-mentioned documents, and in whose possession they now are*].

7. According to the best of my knowledge, information, and belief, I have not now, and never had in my possession, custody, or power, or in the possession, custody, or power of my solicitors or agents, solicitor or agent, or in the possession, custody, or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedules hereto.

## FORM 10.

*Form of Notice to produce Documents.*

In the High Court of Justice,  
Admiralty Division.

*Title.*

Take notice that the [*plaintiff or defendant*] requires you to produce for his inspection the following documents referred to in your [*statement of claim, or defence, or affidavit dated*                      the                      day of                      A.D.                      ].

[*Describe documents required.*]

To Z.,  
Solicitor for

X.Y.,  
Solicitor to the

## FORM 11.

*Form of Notice to inspect Documents.*

In the High Court of Justice,  
Admiralty Division.

*Title.*

Take notice that you can inspect the documents mentioned in your notice of the                      day of                      A.D.                      [*except the deed numbered                      in that notice*] at my office on Thursday next, the instant, between the hours of 12 and 4 o'clock.

Or, that the [*plaintiff or defendant*] objects to giving you inspection of the documents mentioned in your notice of the                      day of                      A.D.                      , on the ground that [*state the ground*].

## FORM 12.

*Form of Notice to admit Documents.*

In the High Court of Justice,  
Admiralty Division.

*A. B. v. C. D.*

Take notice that the plaintiff [*or defendant*] in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [*or plaintiff*], his solicitor or agent, at \_\_\_\_\_, on \_\_\_\_\_, between the hours of \_\_\_\_\_; and the defendant [*or plaintiff*] is hereby required within forty-eight hours from the last-mentioned hour to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this cause.

Dated, &c.

To *E. F.*, solicitor [*or agent*] for defendant [*or plaintiff*].

*G. H.*, solicitor [*or agent*] for plaintiff [*or defendant*].

[*Here describe the documents, the manner of doing which may be as follows:—*]

## ORIGINALS.

Description of Documents.	Dates.
Letter—defendant to plaintiff . . . . .	March 1, 1848.
Policy of insurance on goods by ship <i>Isabella</i> , on voyage from Oporto to London . . . . .	December 3, 1847.
Memorandum of agreement between <i>C. D.</i> , captain of said ship, and <i>E. F.</i> . . . . .	January 1, 1848.
Bill of exchange for £100 at three months, drawn by <i>A. B.</i> on and accepted by <i>C. D.</i> , indorsed by <i>E. F.</i> and <i>G. H.</i> . . . . .	May 1, 1849.

## FORMS.

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## COPIES.

Description of Documents.	Dates.	Original or Duplicate served, sent, or delivered, when, how, and by whom.
Letter—plaintiff to defendant	February 1, 1848 .	Sent by General Post, February 2, 1848.
Notice to produce papers .	March 1, 1848 .	Served March 2, 1848, on defendant's attorney, by <i>E. F.</i> of —
Record of a judgment of the Court of Queen's Bench in an action, <i>J. S. v. J. N.</i>	Trinity Term, 10th Vict. . . .	

(a) No. 4.—*Præcipe for Warrant.*

188 . No.

In the High Court of Justice,  
Admiralty Division.

Between [*state title of cause*] A. B., plaintiff, and C. D., defendant.  
Ship, E. F.

I, \_\_\_\_\_, solicitor for the (*state whether plaintiff or defendant*), in this action, pray a warrant to arrest (*state name and nature of property*), and there being no *caveat* against the issue thereof outstanding.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 188 .

[*To be signed by the solicitor, or by his clerk for him.*]

No. 20.—*Præcipe for Notice of Bail.*[*Year*] [*Letter*] No.

In the High Court of Justice,  
Admiralty Division.

[*State title of cause.*]

I, A. B., solicitor for the [*state whether plaintiff or defendant*]; tender the under-mentioned persons as bail on behalf of [*state the name, address, and description of the party for whom bail is to be given*], in the sum of [*state the sum in letters*] pounds, to answer judgment in this cause (*if for costs add, so far as regards costs*).

(a) The Forms down to and including No. 58 are those which were made under the Rules of 1859, and which are still in force in some cases with slight alterations.

## Names, Addresses, and Descriptions of

Sureties.	Referees.
1. _____	_____
2. _____	_____

Dated the        day of        18 .

[To be signed by the solicitor, or by his clerk for him.]  
 [The names of bankers should, if possible, be given as referees.]

## No. 21.—Notice of Bail.

In the High Court of Justice,        [Year] [Letter] No.  
 Admiralty Division.

[State title of cause.]

Take notice, that A. B., solicitor for the [state whether plaintiff or defendant], tenders the under-mentioned persons as bail on behalf of [state name, address, and description of the party for whom bail is to be given], in the sum of [state the sum in letters] pounds, to answer judgment in this action (if for costs add, so far as regards costs).

## Names, Addresses, and Descriptions of

Sureties.	Referees.
1. _____	_____
2. _____	_____

Dated the        day of        18 .

G. H., Marshal.

## No. 22.—Marshal's Report as to the Sufficiency of Proposed Bail.

In the High Court of Justice,        [Year] [Letter] No.  
 Admiralty Division.

[State title of cause.]

I hereby report that I have made diligent inquiry and certified myself that [state names, addresses, and descriptions of the two sureties] the proposed bail on behalf of [state name, address, and description of the party for whom bail is to be given] to answer judgment in this cause (if for costs add, so far as regards costs) are respectively sufficient sureties for the sum of [state the sum in letters] pounds.

Dated the        day of        18 .

G. H., Marshal.

## No. 23.—Præcipe for Bail Bond.

In the High Court of Justice,        [Year] [Letter] No.  
 Admiralty Division.

[State title of cause.]

I, A. B., solicitor for the [state whether plaintiff or defendant], prays a bail bond for the signature of the sureties named in the annexed notice of bail and report of the marshal, left herewith.

Dated the        day of        18 .

[To be signed by the solicitor, or by his clerk for him.]

No. 24.—*Bail Bond.*

[Year] [Letter] No.

In the High Court of Justice,  
Admiralty Division.

[State title of cause.]

Whereas an action is now pending in the Admiralty Division of the High Court of Justice, between A. B., plaintiff, and C. D., defendant. Now therefore we and hereby jointly and severally submit ourselves to the jurisdiction of the said Court, and consent that, if he the said shall not pay what may be adjudged against him in the said cause with costs, execution may issue forth against us, our heirs, executors, and administrators, goods and chattels, for a sum not exceeding pounds.

[Signatures of Sureties.]

This bail bond was signed by the  
said and , the sure-  
ties, the day of  
18 .

Before me

[To be signed before the registrar, or one of the clerks in the registry, or before a commissioner.]

No. 25.—*Præcipe for Commission to take Bail.*

[Year] [Letter] No.

In the High Court of Justice,  
Admiralty Division.

[State title of cause.]

I, A. B., solicitor for the [state whether plaintiff or defendant], pray a commission to take bail on behalf of [state name, address, and description of the person for whom bail is to be given], in the sum of [state the sum in letters] pounds, to answer judgment in this cause (if for costs add, so far as regards costs); the said commission to be addressed to

Dated the . day of 18 .

[To be signed by the solicitor, or by his clerk for him.]

No. 26.—*Commission for Bail.*

188 . No.

In the High Court of Justice,  
Admiralty Division.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. To all and singular commissioners to administer oaths in the Supreme Court of Judicature, greeting. Whereas in an action pending in the Admiralty Division of our High Court of Justice between plaintiff, and defendant, bail is required to be taken on behalf of , in the sum of pounds,

to answer judgment in the said action

We therefore hereby authorize you to take such bail on behalf of the said \_\_\_\_\_ from two sufficient sureties, who may be produced before you for that purpose, upon the bail bond hereto annexed, and to swear the said sureties to the truth of the annexed affidavits as to their sufficiency.

And we command you, upon the said bail bond and affidavits being duly executed and signed by the said sureties, to transmit the same, attested by you, into the principal registry of the Admiralty Division of our said Court.

Given at London, under the seal of our said Court, the  
day of \_\_\_\_\_ 188 .

Taken out by \_\_\_\_\_

*The Form of Oath to be administered to each of the Sureties.*

You swear that the contents of the affidavit to which you have subscribed your name are true.

So help you God.

---

No. 27.—*Standing Commission to take Bail.*

[Year] [Letter] No.

In the High Court of Justice,  
Admiralty Division.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. To \_\_\_\_\_, greeting. Whereas the Judge of the Admiralty Division of our High Court of Justice has decreed a commission to be issued unto you authorizing you to take bail in any action in our said Court : We therefore hereby authorize you, until this commission be revoked, to take bail in any cause or causes in our said Court from any sufficient sureties who may at any time be produced before you for that purpose, and to swear them to the truth of the affidavits as to their sufficiency in that behalf. And we command you, upon the bail bond and affidavits as to the sufficiency of the sureties in any cause being duly executed and signed by the sureties, to transmit the same attested by you into the registry of our said Court.

Given at London, under the seal of our said Court, the  
day of \_\_\_\_\_ in the year of our Lord 18 .

E. F., Registrar.

Standing commission to take bail.  
Issued to \_\_\_\_\_

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No. 28.—*Affidavit of Justification.*

[Year] [Letter] No.

In the High Court of Justice,  
Admiralty Division.

[State title of cause].

I [state name, address, and description], one of the proposed sureties for [state name, address, and description of the person for whom bail is

*to be given*], make oath and say, that I am worth more than the sum of [*state the sum in letters in which bail is to be given*] pounds after the payment of all my debts.

On the        day of        18 the }  
 said        was duly sworn to the } *Signature of surety.*  
 truth of this affidavit, at

Before me,  
 Commissioner.

No. 29.—*Præcipe for Release.*

[Year] [Letter] No.

In the High Court of Justice,  
 Admiralty Division.

[*State title of cause.*]

I, A. B., solicitor for the [*state whether plaintiff or defendant*] in this action pray a release of [*state name and nature of property*] from the arrest effected by virtue of a warrant issued from the Registry of the said Division in this action, and there being no *caveat* against the release thereof outstanding.

Dated the        day of        18 .

[*To be signed by the solicitor, or by his clerk for him.*]

No. 30.—*Release.*

[188 ] [Letter] No.

In the High Court of Admiralty of England.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To the Marshal of the High Court of our Admiralty of England, and to all and singular his substitutes, greeting. Whereas in a cause of instituted in our said Court on behalf of        against        , we did command you to arrest the said        and to keep the same under safe arrest until you should receive further orders from us. Now we do hereby command you to release the said        from the arrest effected by virtue of our warrant in the said cause, upon payment being made to you of all costs, charges, and expenses attending the care and custody of the property whilst under arrest in that cause.

Given at London, under the seal of our said Court, the  
 day of        in the year of our Lord one thousand eight hundred  
 and

E. F.,  
 Registrar.

Release  
 Taken out by



No. 31.—*Præcipe for Caveat Release.*

[Year] [Letter] No.

In the High Court of Justice,  
Admiralty Division.

[State title of cause.]

I, A. B., solicitor for the plaintiff in an action pending in the Admiralty Division of the High Court of Justice between [state parties], pray a caveat against the release of the [state name and nature of property].

Dated the            day of            18    .

[To be signed by the solicitor, or by his clerk for him.]

No. 32.—*Præcipe for Caveat Warrant, by Defendant.*In the High Court of Justice,  
Admiralty Division.

[State title of cause.]

I [state name, address, and description], hereby undertake to enter an appearance in any action that may be commenced in the Principal Registry of the Admiralty Division of the High Court of Justice, in which the plaintiff is entitled to arrest [state name and nature of the property], and within three days after I shall have been served with a writ of summons in any such action to give bail therein in a sum not exceeding [state amount for which the undertaking is given] pounds, or to pay such sum into the aforesaid registry. And I consent that all instruments and other documents in such action may be left for me at [state address].

Dated the            day of            188    .

[To be signed by the party, or by his solicitor.]

\* *Præcipe for Caveat Warrant by Plaintiff, in Case of a Counterclaim.*

[Year] [Letter] No.

In the High Court of Justice,  
Admiralty Division.

Between                                  plaintiffs, and                                  defendants.

I [state name, address, and description], hereby undertake within three days after I shall have been served with a notice of any counterclaim herein in respect of which the defendant is entitled to arrest [state name and nature of property] to give bail to answer such counterclaim in a sum not exceeding [state amount for which the undertaking is given] pounds, or to pay such sum into the Principal Registry of the Admiralty Division of the High Court of Justice.

Dated the            day of            188    .

[To be signed by the party, or by his solicitor.]

\* This Form issues from the registry.

No. 33.—*Petition*.\*

[Year] [Letter] No.

In the High Court of Justice,  
Admiralty Division.

The [state title of cause], master.

A. B., solicitor for the plaintiff in an action pending in the Admiralty Division of the High Court of Justice between [state the parties] says as follows [here make the necessary statements, in short paragraphs, numbered consecutively].

And the said A. B. prays [here state the plaintiff's prayer].

Dated the            day of            18 .

No. 34.—*Answer*.

[Year] [Letter] No.

In the High Court of Justice,  
Admiralty Division.

[State title of cause.]

C. D., solicitor for [state name, address, and description], the defendant in this action, says as follows : [here make the necessary statements, in short paragraphs, numbered consecutively].

And the said C. D. prays [here state the prayer of the defendant].

Dated the            day of            18 .

No. 35.—*Reply, or any subsequent Pleading*.

[Year] [Letter] No.

In the High Court of Justice,  
Admiralty Division.

[State title of cause.]

A. B., solicitor for the [state whether plaintiff or defendant], further says as follows: [here make the necessary statements, in short paragraphs, numbered consecutively].

Dated the            day of            , 18 .

No. 36.—*Conclusion*.

[Year] [Letter] No.

In the High Court of Justice,  
Admiralty Division.

[State title of cause.]

A. B., solicitor for the [state whether plaintiff or defendant], says that he does not plead further, and prays that the pleadings be concluded.

Dated the            day of            , 18 .

\* This and the three following Forms are still required for petitions on protest, and in objection to the registrar's report.

No. 37.—*Return as to Witnesses examined in London.*

In the High Court of Justice, [Year] [Letter] No.  
Admiralty Division.

[State title of cause.]

I, A. B., examiner, hereby certify as follows :—

(1.) On the day of , 18 , in the presence of the proctors for the plaintiff and defendant [or in the absence of one or other of them, as the case may be], I administered an oath to and caused to be examined the following witnesses, who were produced before me on behalf of the [state whether plaintiff or defendant] to give evidence in this cause, viz.

*John Thomas.*

*William Roe.*

*&c. &c.*

(2.) On the day of , 18 , in the presence of the said proctors [or in the absence of one or other of them, as the case may be], I administered an oath to and caused to be examined the following witnesses, who were produced before me on behalf of the [state whether plaintiff or defendant], to give evidence in this cause, viz.

*William Thomas,*

*&c. &c.*

Dated the day of 18 .

G. H., Examiner.

No. 38.—*Præcipe for Commission to examine Witnesses (a).*

In the High Court of Justice, [Year] [Letter] No.  
Admiralty Division.

[State title of cause.]

I, A. B., solicitor for the [state whether plaintiff or defendant], pray a commission for the examination of witnesses in this cause, decreed by the judge to be opened at on the day of 18 , and to be addressed to [state name of the examiner or commissioner.]

[To be signed by the solicitor, or by his clerk for him.]

No. 39.—*Commission to examine Witnesses (b).*

In the High Court of Justice, [Year] [Letter] No.  
Admiralty Division.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To [state name and address of examiner or commissioner appointed], greeting. Whereas in an action pending in the Admiralty Division of our High Court of Justice between [state the parties] the judge of the said division has decreed a commission to be issued for the examination of witnesses concerning the truth of the matters at issue in the said cause: We

(a) Form E 16, under Rules of April, 1880, will equally be accepted in the Registry.

(b) Form G 16, of April, 1880, will also be accepted.

therefore hereby authorise you, upon the            day of           , 18 .  
at           , in the presence of the solicitors in the said cause, or in the  
presence of their or either of their lawfully appointed substitutes,  
or otherwise, notwithstanding the absence of either of them, to swear  
the witnesses who shall be produced before you for examination in  
the said cause, and cause them to be examined, and their depositions  
to be reduced into writing. We further authorise you to adjourn (if  
necessary) the said examinations from time to time and from place to  
place, as you may find expedient. And we command you, upon the  
examinations being completed, to transmit the depositions and the  
whole proceedings had and done before you, together with this com-  
mission, to the registry of our said Court.

Given at London, under the seal of our said Court, the            day  
of           , in the year of our Lord 18 .

E. F., Registrar.

Commission to examine witnesses.  
Taken out by

-----  
No. 40.—*Return to Commission to examine Witnesses.*

In the High Court of Justice,            [Year] [Letter] No.  
Admiralty Division.

[State title of cause.]

I, A. B., the examiner [or commissioner] named in the commission  
hereto annexed, bearing date the            day of           , 18 , hereby  
certify as follows:

(1.) On the            day of           , 18 , I opened the said commis-  
sion at           , and in the presence of the solicitors for the plaintiff and  
defendant [or in the absence of one or other of them, as the case may be]  
administered an oath to and caused to be examined the following  
witnesses, who were produced before me on behalf of the [state  
whether plaintiff or defendant] to give evidence in this cause, viz.:

*John Thomas.*  
*William Roe.*  
*&c. &c.*

(2.) On the            day of           , 18 , I proceeded with the  
examinations at the same place (or at some other place, as the case may  
be), and in the presence of the said solicitors administered an oath to  
and caused to be examined the following witnesses, who were pro-  
duced before me on behalf of the [state whether plaintiff or defendant]  
to give evidence in this cause, viz.

*William Thomas,*  
*&c. &c.*

Dated the            day of           , 18 .  
G. H., Examiner or Commissioner.

-----  
No. 41.—*Writ of Subpoena (a).*

Victoria, by the Grace of God of the United Kingdom of Great  
Britain and Ireland Queen, Defender of the Faith, to W. W. [names of

(a) Form G 1, of April, 1880, will be also accepted at the Registry.

*all witnesses included in the subpoena*, greeting. We command you that laying aside all and singular business and excuses you and every of you be and appear in your proper persons in the Admiralty Division of the High Court of Justice, before Sir Robert Phillimore, at Westminster, on the day of , by of the clock in the forenoon of the same day, to testify all and singular those things which you or either of you know in a certain cause now depending in our High Court of Justice, between , and on that day to be tried; and this you or any of you shall by no means omit, under the penalty upon each of you of £100.

Witness,

---

No. 42.—*Summons (a)*.

[Year] [Letter] No.

In the High Court of Justice,  
Admiralty Division.

[State title of cause.]

Let the solicitor, attend me at my chambers, at Westminster, on next, at of the clock, to show cause why [*state the subject matter of the summons*].

Dated the day of 18 .

---

No. 48.—*Præcipe for Commission of Appraisement and Sale*.

[Year] [Letter] No.

In the High Court of Justice,  
Admiralty Division.

[State title of cause.]

I, A. B., solicitor for the [*state whether plaintiff or defendant*], pray a commission for the appraisement and sale of the [*state name and nature of property*], which was decreed by the Court on the day of 18 .

Dated the day of 18 .

[To be signed by the solicitor, or by his clerk for him.]

---

No. 49.—*Commission of Appraisement and Sale*.

In the High Court of Justice, [Year] [Letter] No.  
Admiralty Division.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To the marshal of the Admiralty Division of our High Court of Justice, officer of our Supreme Court, and to all and singular his substitutes, greeting. Whereas in an action pending in our said High Court between [*state plaintiffs and defendants*], the judge of our said High Court of Justice has decreed the vessel [*state name of ship*] to be appraised and sold: We therefore hereby authorise and command you to reduce into writing

(a) Form H 1, of April, 1880, will also be accepted at the Registry.

an inventory of the said \_\_\_\_\_, and, having chosen one or more experienced person or persons, to swear him or them to appraise the same according to the true value thereof, and upon a certificate of such value having been reduced into writing to cause the said \_\_\_\_\_ to be sold by public auction for the highest price, not under the appraised value thereof, that can be obtained for the same. And we further command you, immediately upon the sale being completed, to pay the proceeds arising therefrom into the principal registry of the said Admiralty Division, and to file the certificate of appraisement signed by you and the appraiser or appraisers, and an account of the sale signed by you together with this commission.

Given at London, under the seal of our said Court, the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord 18 \_\_\_\_\_.

Commission of appraisement and sale.

Taken out by \_\_\_\_\_

E. F., Registrar.

No. 50.—*Præcipe for Order for Payment of Money out of Court.*

In the High Court of Justice, [Year] [Letter] No. \_\_\_\_\_  
Admiralty Division.

[State title of cause.]

I, A. B., solicitor for the [state whether plaintiff or defendant], pray an order for the payment out of Court to [state to whom] of the sum of [state the sum in letters], being the [state the nature of the claim] decreed to be paid to \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.

[To be signed by the solicitor, or by his clerk for him.]

No. 51.—*Order for Payment of Money out of Court.*

In the High Court of Justice, [Year] [Letter] No. \_\_\_\_\_  
Admiralty Division.

[State title of cause.]

I, J. K., judge of the Admiralty Division of the High Court of Justice, hereby order payment of the sum of \_\_\_\_\_, being the amount of \_\_\_\_\_, to be made to \_\_\_\_\_, out of the \_\_\_\_\_ now remaining in the registry of the said Court.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.

J. K., Judge.

Witness, E. F., Registrar.

No. 54.—*Præcipe for Monition to bring in Certificate of Ship's Register.*

In the High Court of Justice, [Year] [Letter] No. \_\_\_\_\_  
Admiralty Division.

[State title of cause.]

I, A. B., solicitor for the [state whether plaintiff or defendant], pray a monition against [state name, address, and description] to bring into the registry of the Court the certificate of registry belonging to the above-named \_\_\_\_\_ or vessel \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.

[To be signed by the solicitor, or by his clerk for him.]

No. 55.—*Motion to bring in Certificate of Ship's Register.*

[Year] [Letter] No.

In the High Court of Justice,  
Admiralty Division.

[State title of cause.]

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To , greeting. Whereas in a cause of instituted in the Admiralty Division of our High Court of Justice on behalf of against the or vessel [whereof now is or lately was master], her tackle, apparel and furniture, the judge of our said Court has decreed a monition to be issued against you to bring in the certificate of registry belonging to the said or vessel, which is in your possession or under your control: We therefore hereby command you the said to bring, within six days from the service hereof (exclusive of the day of such service), the said certificate into the registry of our said Court, to abide the judgment of our said Court concerning the same.

Given at London, under the seal of our said Court, the day of in the year of our Lord 18 .

E. F., Registrar.

Monition to bring in ship's register.  
Taken out by .

No. 56.—*Præcipe to withdraw Caveat.*

[Year] [Letter] No.

In the High Court of Justice,  
Admiralty Division.

[State title of cause.]

I, A. B., solicitor for the [state whether plaintiff or defendant], pray that the caveat against [state tenor of caveat], entered by me on the day of 18 , on behalf of [state name] may be withdrawn.

Dated the day of 18 .

[To be signed by the person by whom the præcipe for the entry of the caveat was signed.]

No. 57.—*Præcipe for Service by the Marshal of any Instrument in Rem other than a Warrant.*

In the High Court of Justice,  
Admiralty Division.

[State title of cause.]

I, A. B., solicitor for the [state whether plaintiff or defendant], pray that the [state nature of instrument] left herewith be duly executed.

Dated the day of 18 .

[To be signed by the solicitor, or by his clerk for him.]





*Præcipe for the attendance of Trinity Masters or Nautical Assessors.*

In the High Court of Justice,  
Admiralty Division,

187 . No.

Ship

The solicitors for the [*plaintiffs or defendants*] pray that the attendance of [*Trinity Masters or Nautical Assessors*] may be requested at the hearing of this [*action or appeal*].

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 188 .

[*To be signed by the solicitor, or by his clerk for him.*]

FORM AND PRECEDENT OF PRELIMINARY ACT IN ACTION FOR  
DAMAGE BY COLLISION.

1882.—[*Letter, and Number.*]

[*Title.*]

Preliminary Acts.

	ON BEHALF OF THE OWNERS OF THE <i>S. G. G. Thompson.</i>	ON BEHALF OF THE OWNERS OF THE <i>Pactolus.</i>
	I. The <i>S. G. G. Thompson</i> . A. B. Master. The <i>Pactolus</i> . C. D., Master.	I. The ship <i>Pactolus</i> , C. D., Master. The <i>S. G. G. Thompson</i> . A. B., Master.
The names of the vessels which came into collision, and the names of their masters.		
Time of collision.	II. About 11.40 a.m. on December 29, 1876.	II. About 11 a.m. on December 29, 1876.
Place of collision.	III. The river Mersey, a short distance below the landing-stage.	III. Mid-river, off the Waterloo Dock, in the River Mersey.
Direction of wind.	IV. No wind, or scarcely any,—south south-east.	IV. About S.E.
State of the weather.	V. Thick fog, wind having died suddenly away.	V. Hazy.
State and force of the tide.	VI. Ebb, force about five knots per hour.	VI. Ebb, making about 4 knots an hour.

<p>The course and speed of the vessel, when the other was first seen.</p>	<p>VII. Drifting with the tide. Head inclined to Cheshire shore.</p>	<p>VII. The <i>Pactolus</i> was at anchor, lying head to tide.</p>
<p>The lights, if any, carried by her.</p>	<p>VIII.</p>	<p>VIII. None.</p>
<p>Distance and bearing of the other vessel, when first seen.</p>	<p>IX. About three points on starboard bow. About a cable's length off.</p>	<p>IX. About five or six ship's lengths off, and on the port bow of the <i>Pactolus</i>.</p>
<p>The lights, if any, of the other vessel, which were first seen.</p>	<p>X.</p>	<p>X. None.</p>
<p>Whether any lights of the other vessel, other than those first seen, came into view before the collision.</p>	<p>XI.</p>	<p>XI. None.</p>
<p>What measures were taken, and when, to avoid the collision.</p>	<p>XII. Helm kept a starboard and <i>Pactolus</i> hailed loudly several times to starboard her helm and sheer to Liverpool side.</p>	<p>XII. The helm of the <i>Pactolus</i> was starboarded as soon as she was hailed from the <i>S. G. G. Thompson</i> to starboard.</p>
<p>The parts of each vessel which first came in contact.</p>	<p>XIII. Starboard fore rigging of <i>S. G. G. Thompson</i>, chain and stem of <i>Pactolus</i>.</p>	<p>XIII. The stem of the <i>Pactolus</i> and the starboard side of the <i>S. G. G. Thompson</i>.</p>
<p>The 18th day of January, 1877.</p>	<p>The 18th day of January, 1877.</p>	<p>The 30th day of January, 1877.</p>
<p><i>D. H. &amp; D.</i> Plaintiff's Solicitors.</p>	<p><i>D. H. &amp; D.</i> Plaintiff's Solicitors.</p>	<p><i>B. &amp; Co.,</i> Defendant's Solicitors.</p>

# APPENDIX V.

## MISCELLANEOUS FORMS AND PRECEDENTS.

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### FORMS AND PRECEDENTS OF AFFIDAVITS TO OBTAIN ARREST OF SHIP.

— o —

1.

#### IN ACTION OF SALVAGE.

(Title.)

I, *A. B.*, the solicitor for the above-named plaintiff, make oath and say as follows :—

1. This action is instituted by *C. D.* of \_\_\_\_\_, shipowner.
2. On the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, the steamship *E. F.*, of which the plaintiff is the owner, whilst on a voyage from *X.* to *Z.*, sighted a disabled steamer flying signals of distress.
3. The said steamship in distress proved to be the *G. H.*, of which the defendants are the owners, and the *E. F.*, on the \_\_\_\_\_ day of \_\_\_\_\_, rendered salvage services to the said *G. H.*, at great risk to herself and to those on board, and received considerable damage in so doing. For the said services and damage the plaintiffs have claimed salvage and a sum in respect of the damage received by the said steamship *E. F.* from the defendants.
4. The owners of the said steamship *G. H.*, against which a warrant of arrest is now claimed, have refused to pay to the plaintiff any sum by way of salvage reward, or to make good the damage received by the said steamship *E. F.* whilst rendering such services as aforesaid.
5. The aid and process of this honourable Court are required to enforce payment of a sum as salvage reward and for the damage aforesaid.

— o —  
2.

#### IN ACTION FOR DISTRIBUTION OF SALVAGE.

(Title.)

I, *A. B.*, of \_\_\_\_\_, the solicitor to the above-named plaintiffs, make oath and say as follows :—

1. This action is instituted by *C. D.*, *E. F.*, and *G. H.*, able seamen, who on the            day of           , 188   , were serving on board the ship *A. B.*

2. I am informed and believe that on the said            day of           , the ship *A. B.* rendered salvage services to the steamship *C. D.*, and the plaintiffs were engaged in their capacities aforesaid on board the said ship *A. B.* during the rendering of such services.

3. A sum of £            has been paid by the owners of the *C. D.* to the owners of the *A. B.* for the salvage services rendered by the *A. B.* to the *C. D.*, and has been accepted by them in respect of such services.

4. The above-named defendants, *L. M.* and *N. O.*, shipowners of           , are the registered owners of the said ship *A. B.*, and have duly received such sum as aforesaid, of which they have now possession.

5. The above named defendants, *L. M.* and *N. O.*, have not paid any part of such sum to the plaintiffs in respect of the services rendered by them on board the *A. B.* on the            day of            aforesaid, and refuse to pay to the plaintiffs an equitable proportion of such sum.

6. The aid and process of this honourable Court are required to enforce payment to the plaintiffs of an equitable proportion of the above-named sum of £           .

---

3.

IN ACTION OF TOWAGE.

(Title.)

I, *A. B.*, solicitor for the above-named plaintiffs, make oath and say as follows:—

1. The plaintiffs are the owners of the tug *E.*, and reside at *L.*

2. I am informed and believe that on the            day of           , 188   , the master of the said tug *E.* agreed to tow the ship *L.*, now sought to be arrested from *F.* to *G.* for the sum of £           .

3. The tug *E.* towed the said ship from *F.* to *G.*, but the owners of the said ship *L.* have refused to pay the said sum of £           , and the said sum still remains unpaid.

4. The aid and process of this honourable Court are required to obtain payment of the said sum of £           .

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4.

IN ACTION OF DAMAGE.

(Title.)

I, *J. C.*, of Liverpool, in the County of Lancaster, clerk to Messrs. *B. & Co.*, solicitors for the plaintiffs in this action [or I, *A. B.*, the above named plaintiff], make oath and say:—

1. This action is brought by *A. B.* [or one *A. B.*], shipowner of Liverpool, in the County of Lancaster.

2. I am informed and verily believe that on the 20th day of February last, a collision, the subject of this action, occurred in the Salisbury Dock, Liverpool, between the above-named brig or vessel

*Kate*, of which the arrest is now desired, and the *S. S. Athlete*, whereby the latter vessel sustained considerable damage [or was sunk].

3. The owners of the said brig or vessel *Kate*, as I am further informed and believe, reside out of the jurisdiction of this honourable Court, and the said claim remains unpaid [or, I have made application for compensation in respect of the said damage to [or, loss of] the said steamship to the owners of the said brig, but they have refused and decline to pay such compensation].

4. The said brig or vessel *Kate* is now advertised for sale by public auction.

5. The aid and process of this honourable Court are required to enforce payment of the plaintiff's [or my] claim in respect of the said collision.

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5.

DAMAGE TO CARGO.

(Title.)

I, *A. B.*, solicitor to the above-named plaintiff, make oath and say as follows:—

1. This action is instituted by *C. D.*, of *L.*, merchant.

2. On the            day of March, 1882, Messrs. *G. & Co.* shipped at Rangoon on board the said ship *P.*, now sought to be arrested, a cargo of rice to be carried to London, for which the master thereof signed bills of lading.

3. The plaintiff is the indorsee of one of such bills of lading.

4. During the said voyage the said cargo suffered damage, and was delivered to the plaintiffs in a damaged state.

5. The plaintiffs have claimed damages from the defendants in respect of such injury as aforesaid, but the said claim has not been paid by the defendants.

6. The aid and process of this honourable Court are required to enforce payment of the said claim.

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6.

IN AN ACTION FOR WAGES AND DISBURSEMENTS.

(Title.)

I, *A. B.*, the above-named plaintiff [or, solicitor to the above-named plaintiff] make oath and say:—

1. This action is brought by me [or by *A. B.*], a master mariner, to obtain the payment of wages due to me [or to him] as master of the above-named vessel *C. D.*, and on account of disbursements made by me [or, by him] as such master as aforesaid, from the 20th of August to the 9th of November. The said claim amounts to the sum of £ .

2. The said vessel *C. D.* is a Spanish ship, and notice of this action has been given by me [or by my solicitor, or by me, the solicitor for

the above-named plaintiff T.] to Mr. E. F., Consul-General of Spain [this paragraph is only necessary when the ship which is sought to be arrested is a foreign vessel].

3. The owners of the said vessel have not satisfied my said claim [or, the claim of the plaintiff] herein.

4. The aid and process of this honourable Court are required to enforce payment of my [or, of the plaintiff's] claim for such wages and disbursements as aforesaid.

## 7.

## IN ACTION OF MORTGAGE.

I, A.B., banker, of L., the plaintiff in the above-named action, make oath and say as follows:—

1. On the        day of       , 18       , one M., the sole owner of the ship X., now sought to be arrested, by deed mortgaged the said ship to me as security for a sum of £       .

2. The said sum of £        has not been repaid to me by the said M.

3. In consequence of the default of the said M. in repayment of the said sum of £       , I am entitled to receive possession of the said ship under the provisions of the said deed.

4. The aid and process of this honourable Court are required to obtain possession of the said ship.

## 8.

## IN ACTION OF BOTTOMRY.

(Title.)

I, A.B., merchant, the above-named plaintiff, make oath and say as follows:—

1. I am the assignee [or, the holder, or the payee] of a bottomry bond for £        on the ship O., the arrest of which is now sought, dated the        day of       , 18       , payable to Messrs. H. & Co. or their assignees, or order or indorsees, on the arrival of the said ship at a port of discharge in the United Kingdom. A copy of the said bond forms an exhibit hereto.

2. The said ship arrived at the port of L. on the        day of       .

3. The said bond still remains unpaid, and this action is brought in respect of the sum due on the said bond.

4. The aid and process of this honourable Court are required to enforce payment of the said bond.

## 9.

## IN ACTION FOR NECESSARIES.

(Title)

I, A.B., the solicitor for the above-named plaintiffs, make oath and say as follows:—

1. The plaintiffs, Messrs. *C. D. & Co.*, are engineers and iron-founders of Liverpool.

2. The plaintiffs executed certain necessary work for and supplied with certain necessary materials the ship *X.*, belonging to the port of London, whilst she was lying at Liverpool, to the value of £ .

3. The said sum of £ still remains due and owing to the plaintiffs.

4. The aid and process of this honourable Court are required to enforce payment of the said claim.

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10.

IN ACTION OF POSSESSION.

(Title.)

I, *A.B.*, of , broker, the above-named plaintiff, make oath and say as follows:—

1. On the day of , 18 , an agreement was entered into between myself and one *C.D.*, whereby the said *C.D.* transferred to me, in consideration of the sum of £ , 40-64th shares in the ship or vessel *X.*, and of which the arrest is now sought.

2. The said *C.D.* disposed of the remaining 24-64th shares in the said ship or vessel to the defendant.

3. The defendant refuses to permit the said ship or vessel to leave the port of , and to fulfil a charter party entered into by the plaintiff with one *G.* in respect of the said ship or vessel.

4. The aid and process of this honourable Court are required to obtain possession of the said ship or vessel.

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11.

FORM OF A CLAIM ON A REFERENCE BEFORE REGISTRAR AND MERCHANTS.

In the High Court of Justice,  
Admiralty Division.

*Claim.*

An account of the losses of the owners, master, and crew of the late steamship *A. B.*, by reason of the said steamship having been run down and sunk by the steamship *T.* on the 14th day of October, 18 .

Ship.	£	s.	d.
1. The value of the late steamship <i>A. B.</i> ... ..	18,000	0	0
Contracts.			
2. Loss on contracts for the use of the <i>A. B.</i> ... ..	730	0	0
Cargo.			
3. Value of two cases of goods ... ..	30	0	0
Crew's effects:—			
4. George Dixon, master ... ..	43	9	6
5. Thomas Smith, mate ... ..	8	10	0
6. Frederick Jones, seaman ... ..	5	10	0

12.

AFFIDAVIT OF VALUE OF SHIP TOTALLY LOST.

I, A. B., of L. [*state trade or employment*], make oath and say as follows:—

1. I was well acquainted with the late screw steamship X. Y., of L. I inspected her on her completion in , 18 , and afterwards at the commencement of the voyage she was performing when she was run down, on the day of , 18 .

2. The said steamship X. Y. was built and completed at L. aforesaid, in the month of , 18 . She was tons gross register, worked by engines of horse power, and at the time she was lost she was classed at Lloyd's.

3. The market value of the said steamship at the time of her loss was £ at least.

Sworn by the said A. B. at , before me, R. B., this day of } A. B.  
A Commissioner, &c.

13.

AFFIDAVIT OF LOSS OF PROPERTY ON BOARD A SHIP TOTALLY LOST.

I, A. B., of W., in the county of D. [*state employment*], make oath and say as follows:—

1. That I was [*state employment*] on board the X. Y. at the time when she was sunk by the T.

2. The schedule hereunto annexed and marked by me contains a correct list of [*state the nature of the lost articles*] and other articles belonging to me, and on board the said steamship X. Y. at the time she was so sunk as aforesaid.

3. The whole of the said wearing apparel mentioned in the said schedule were entirely lost in the said steamship X. Y.

4. The several amounts set forth in the said schedule were the true value of the articles (opposite to which they are placed) at the time they were lost as aforesaid, to the best of my knowledge, information, and belief.

Sworn by the said A. B. at , before me, B. B., this day of } A. B.  
A Commissioner, &c.

Exhibit annexed.

List of clothes lost on board the X. Y. belonging to A. B.

	£	s.	d.
1 Pilot cloth jacket . . . . .	1	10	0
3 Flannel shirts . . . . .	1	7	0
	2 17 0		

This is the schedule referred to in the affidavit of A. B. sworn before me this day of . } A. B.  
R. B., A Commissioner, &c.



## 14.

## AFFIDAVIT AS TO AMOUNT OF FREIGHT DUE TO SHIPOWNER.

(Title.)

I, A. B., of \_\_\_\_\_, broker, make oath, and say as follows:—

1. I am the agent for the owner of the above-named vessel.

2. The said vessel was abandoned at sea in the month of \_\_\_\_\_, when on a voyage from \_\_\_\_\_ to \_\_\_\_\_, and was afterwards brought to \_\_\_\_\_, where she was taken possession of by my agent on behalf of her owner, and it was arranged with the alleged salvors that she should be brought to \_\_\_\_\_, which was done.

3. The exhibit hereunto annexed, marked No. 1, is a statement of the freight due upon the cargo laden on board the said vessel on her arrival at the port of \_\_\_\_\_. The sum of £ \_\_\_\_\_ therein mentioned is the gross value of the said freight. The necessary expenses of realizing the said freight in \_\_\_\_\_, amount to £ \_\_\_\_\_, as shown by the said exhibit No. 1, and the expenses incurred at [port of loading], amount to £ \_\_\_\_\_, making, to be deducted from the said gross value, the sum of £ \_\_\_\_\_, and the net value of the said freight is £ \_\_\_\_\_, and no more.

4. The exhibit hereunto annexed, marked No. 2, is an account of the expenses incurred by the master at [place to which ship was brought by salvors], and in bringing the said vessel thence to [port of discharge].

Sworn at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_, before me, C. D. \_\_\_\_\_ A. B.

Exhibit annexed.

This is the exhibit referred to in the above affidavit.

Sworn at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_, before me, C. D. \_\_\_\_\_ A. B.

## 15.

## AFFIDAVIT AS TO VALUE OF CARGO.

(Title.)

I, A. B., of \_\_\_\_\_, make oath, and say as follows:—

1. I am the consignee of the cargo now or lately laden on board the above-named ship.

2. At the time when the said vessel was arrested in this action she had on board [cargo].

3. In my opinion the outside value of the said cargo at the time of the said arrest, was £ \_\_\_\_\_, and no more, and if the same were compulsorily sold at the present time I believe that it would not realize more than the said sum of £ \_\_\_\_\_.

Sworn at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_, before me, X. Y. \_\_\_\_\_ A. B.

## 16.

NOTICE TO CONSUL OF INSTITUTION OF ACTION AGAINST A FOREIGN  
VESSEL.

The day , A.D. 18 .  
The [*state nationality*] ship or vessel *Ida*.

Sir,—I hereby give you notice that I have this day , Master.  
instituted an action in the High Court of Justice, Admiralty Division, against the above-named ship or vessel, now lying in the port of to enforce payment of wages due to *A. B.*, ordinary seaman on board he said ship or vessel, on her voyage from to .

I am, sir,  
Your obedient servant,  
*C. D.*,

To the Hon. Solicitor to the above-named *A. B.*  
Consul General of [*state government*].

## 17.

## PRECEDENTS OF TENDERS.

## A.

In the High Court of Justice, 1877. B. No. .  
Admiralty Division.

The [*name of ship in action in rem*].  
Between *A. B.*, plaintiff,  
and  
*C. D.* and *E. F.*, defendants.

Take notice that the defendants have paid into Court £ ,  
and say that the said sum is enough to satisfy the plaintiff's claim for the wages and disbursements proceeded for, and the costs of the above action.

Dated the day of , 1877.  
(Signed) *B. & Co.*,  
Defendants' solicitors.

To Mr. *X. Y.*,  
The plaintiff's solicitor.

## B.

(*Title as above.*)

Take notice that I [*or we*] have this day paid to the account of the registrar at the Bank of England [*or into Court*] the sum of £282, which we tender to *A. B.* in full satisfaction for the services proceeded for, and for the costs of the above action.

(Signed) *B. & Co.*,  
Defendants' solicitors.

To *A. B.*,  
The above-named plaintiff.

## C.

(*Title as above.*)

Take notice that I [*or we*] have this day paid into Court [*or to the*



## 21.

## NOTICE OF BAIL.

*(Title.)*

Take notice that bail to answer judgment in this action in the sum of £ , has been given on behalf of *A. B.*, of , the owner of the ship [*name*], by *C. D.*, of , merchant, and *E. F.*, of , broker, before *G. H.*, a commissioner to administer oaths.

Dated the        day of        , 18 .

*M. M.*,

To *N. N.*,        Solicitor for the defendant.

Solicitor for the plaintiffs.

## 22.

## CONSENT TO BAIL BOND BEING FILED AND THE TWENTY-FOUR HOURS' NOTICE OF BAIL WAIVED.

*(Title.)*

I, the undersigned solicitor for the plaintiff, hereby agree that the bail bond in this action shall be immediately filed, notwithstanding twenty-four hours have not elapsed since the service of such notice of bail on me, and I also consent that the [*name of ship*] shall be forthwith released.

Dated        day of        , 18 .

*A. B.*,

Solicitor for the plaintiff.

## 23.

## CONSENT TO RELEASE.

*(Title.)*

I, *A. B.*, solicitor for the plaintiff in this action, hereby consent that the above-named ship [*name*], her tackle, apparel, and furniture, and the cargo now or lately laden therein, shall be immediately released although twenty-four hours have not elapsed since I was served with notice of the bail given on behalf of the defendant.

Dated the        day of        , 18 .

*A. B.*,

Solicitor for the plaintiff.

## 24.

## AGREEMENT OF VALUES.

*(Title.)*

We, the undersigned solicitors for the plaintiffs and defendants in this action, do hereby agree that the value of the above-named ship or vessel shall be taken to be £ , the value of the cargo thereof £ , and the value of the freight due for the transportation of the above cargo £ ; together £ .

Dated the        day of        , 18 .

*A. B.*,

Solicitor for the plaintiff.

*C. D.*,

Solicitor for the defendant.

## 25.

## AGREEMENT AS TO TAKING EVIDENCE.

*(Title.)*

We, the undersigned solicitors for the plaintiff and defendant in this cause, hereby agree that the evidence in this action shall be taken before one or more examiner or examiners of this Court in his or their chambers, or otherwise [or by affidavit, as the case may be].

Dated the            day of            18 .

*A. B.*,  
Solicitor for the plaintiff.  
*C. D.*,  
Solicitor for the defendant.

## 26.

FORM OF NOTICE OF MOTION FOR LEAVE TO PRODUCE FURTHER EVIDENCE WHERE PARTIES HAVE AGREED THAT THE EVIDENCE SHALL BE GIVEN BY AFFIDAVIT.

18 [*put letter and number*].

In the High Court of Justice,  
Admiralty Division.

Between *A. B.*, plaintiff,  
and

The owners of the ship or vessel *Magnet*.

No.

Take notice that we intend to apply by motion to the judge in chambers at Westminster on the            , day of            for leave to produce further evidence in support of the plaintiff's claim herein, namely the evidence either *videlicet* or by affidavit of            , and we have this day filed in the Registry an affidavit of            , in support of the said motion.

Dated

*A. B.*,  
Solicitor for the above-named.

To Messrs. *C. D. & Co.*,  
Defendants' solicitors.

## 27

## NOTICE OF OBJECTION TO ADMISSION OF PLEADINGS.

*(Title.)*

Take notice that I object to the [*state pleadings*], [or to the Report of the Registrar] being admitted in this action.

Dated the            day of            , 18 .

*A. B.*,  
Solicitor for the

To *C. D.*,  
Solicitor for the

## 28.

## NOTICE OF OBJECTION TO TAXATION.

(Title.)

I, *A. B.*, solicitor for the \_\_\_\_\_ hereby give notice that I object to the [*allowance or disallowance*] of the items hereunder specified by the Registrar of the Admiralty Division of the High Court of Justice on the taxation of the [*plaintiff's or defendant's*] bill of costs in this action.

[*List to follow.*]

## 29.

## FORM OF CERTIFICATE OF SURVEY IN ACTION OF DAMAGES.

Fos. 10. No. 172.

The [*name of ship proceeded against*], survey of *A. B.* [*name of injured ship*].

Lloyd's Register of British and Foreign Shipping.

Liverpool, 188 .

This is to certify that the undersigned surveyor to this society, at the request of Messrs. *T. and Co.*, attended at \_\_\_\_\_, and subsequently at the \_\_\_\_\_, for the purpose of ascertaining the extent of damage done to the [*name of ship and master*], she having been in collision with the [*name of ship proceeded against*], on [*state when collision occurred*].

On examination, found the vessel had sustained damage about the bow to the following extent [*state the nature of the damage*].

The following work is necessary in order to make the vessel as efficient as before the accident viz. [*state the nature of the requisite repairs*].

All the above enumerated damages and losses to be made good in order to make her complete and efficient.

(signed) *A. B.*Charge [*of survey*] £ .

# APPENDIX VI.

## PART I

### PRECEDENTS OF PLEADINGS AND BILLS OF COSTS.

#### 1.

##### FORMS OF HEADINGS APPLICABLE TO PLEADINGS.

18 . [Year.] *Letter and number of action.*  
In the High Court of Justice,  
Admiralty Division.

Writ issued the            day of            18 .  
The [name of ship] (a).  
Between [state the names of plaintiff or plaintiffs in full], plaintiffs,  
and  
[State the names of defendant or defendants in full], defendant (b).  
*Termination of Pleadings.*  
Delivered the            day of            , 18 , by            , of  
[state address in full], solicitors for the [plaintiff or defendant].

#### 2.

##### STATEMENT OF CLAIM.

Salvage.  
(Life and  
Cargo  
only).

1. The *Rapid* is a pilot cutter belonging to the Island of Bryher, one of the Scilly Islands, of the value of £500, and was at the time of rendering the services hereinafter mentioned manned with a crew of eight hands including Stephen Woodcock, her master.  
2. The *O. and M.* is a six-oared gig, belonging to the Island of

(a) If the cargo only be proceeded against, the words "cargo ex A." [name of ship] must be inserted.

(b) Sometimes in addition to or in place of the name of the plaintiff or defendant he is described as the owner of the ship or cargo, e.g. :—

The owners, masters, and crews of the pilot cutter,  
*Rapid*, and the boats *Guinevre* and *Swift* . . . . . Plaintiffs.  
The owners of the cargo now or lately laden on  
board the steamship *Schiller* . . . . . Defendants.

Saint Agnes, one of the Scilly Islands, of the value of £40, and was at the time of rendering the service hereinafter mentioned manned by a crew of six hands, including Obadiah Hicks, and a licensed Trinity House pilot who was in command. Salvage.

3. The *Guinevere* is a six-oared gig, belonging to the Island of Saint Agnes, of the value of £40, and was at the time of rendering the services hereinafter mentioned manned with a crew of seven hands, including Stephen Hicks, her coxswain.

4. The *Swift* is a boat belonging to the Island of Saint Agnes, of the value of £15, and was at the time of rendering the said services manned by a crew of four hands, including Uriah Legg, her coxswain.

5. On Friday the 7th of May, 1875, shortly before midnight, the whistle of a steamer, and shortly after the report of a gun, were heard at the Island of Saint Agnes. At the time no particular notice was taken of these signals, as it had been the practice of many vessels to fire guns when passing the Scilly Islands during the night. At this time there was a very dense fog over the whole of the Scilly Islands and a fresh breeze from the south-west.

6. Some of the plaintiffs, however, having regard to the state of the weather, suspected that some vessel might be in danger, and accordingly at daybreak the plaintiffs, the crew of the *O. and M.*, started from the Island of Saint Agnes towards the Western Rocks.

7. About the same time the plaintiffs, the crew of the *Guinevere*, put off in her from Saint Agnes, and proceeded in the same direction. The weather at the time continued densely thick with fog, the wind was from S.W., and a very heavy sea was running through the rocks and breaking over the sunken ledges between which the boats had to pass before they could get outside, to such an extent as to greatly imperil the lives of those on board them. The wind increased as they went on. The fog shut out all land marks, and notwithstanding that many of them were licensed Trinity pilots, they had great difficulty in making their way.

8. On the same morning R. J. Ellis, one of the plaintiffs, being on the Island of Bryher, one of the Scilly Islands, saw three spars wash on shore where he then was, and about 6 a.m. he saw some broken deck planks floating in the water. He immediately summoned the plaintiffs, who with him formed the crew of the *Rapid*, got her under weigh and passed down the channel between the Islands of Sampson and Bryher. In doing this the crew of the *Rapid* underwent the same difficulty and danger as those in the *O. and M.* and the *Guinevere*.

9. Uriah Legg was on the look-out hill above Smith's Sound, in the Island of Saint Agnes, between six and seven a.m. of the same morning, and saw a broken ship's lifeboat drifting to the southward through the Sound with something dark in it, which he could not distinguish for the fog. He immediately with the plaintiffs, who formed with him the crew of the *Swift*, launched the *Swift*, and proceeded as fast as possible in the direction where he had seen the lifeboat. They saw her close to Buccaba, and rowing up to her found that she belonged to the *Schiller* and that there was lying in her a passenger on board the *Schiller* groaning, benumbed with cold, and in a very weak state. The lifeboat was very much damaged, one half of her port side being clean gone. She was floating on a level with the water and the



**Salvage.** passenger was immersed in water except his head and shoulders and he had lost all power of speech.

10. It was impossible to tow the lifeboat in her waterlogged and damaged condition. So, notwithstanding the danger and difficulty of the operation, they succeeded, after shipping much water, in hauling the passenger into the *Swift*, and then rowed as fast as possible to Priglis, where they took him to the house of Hugh Hicks, one of the plaintiffs, and took every measure to restore animation; then put him to bed, and when he had sufficiently recovered took him to the Island of Saint Mary's.

11. In the meantime the other boats, *Rapid*, *O. and M.*, and *Guinevre*, were making the best of their way to the wreck of the *Schiller*. They went first to the reef of Meledgen, thence to Gorregan, Rosevean, Rosevere and Crebawithen, at none of which reefs could they discover anything.

12. Shortly before seven a.m. the master and crew of the *Rapid*, which was then reaching in towards Minalto, heard cries but could see no one owing to the fog. They went in the direction from whence the cries had been heard, which was between the rocks of Mincarlio and Minalto, the channel between which is filled with sunken rocks and ledges, and saw what they believed to be a man floating in the water. They tacked the *Rapid* to clear some sunken rocks near which the man was, and some of the plaintiffs went in their small punt through the broken water on the sunken rocks towards him. Whilst doing this they saw another man and went towards him first. They found him with his arm entangled in a becket, a piece of wood used in shipping, between the combings of the hatchway for the hatches to rest upon. They with difficulty got him clear of this, and then though he was a very large and heavy man and quite insensible, succeeded in getting him into their small punt. Whilst this was being done the heavy current and the wind had carried the punt among the sunken rocks and those on board her were in considerable danger. They put her head to the wind and signalled to the *Rapid* to come towards them, which she did notwithstanding the sunken rocks. They got the two boats as nearly as possible alongside, and put the rescued man (whose name was Rehderer) on board the *Rapid*. The punt was then rowed after the first man and found him in a broken boat filled with water the bottom of which was smashed out and entirely gone. They picked him up and put him on board the *Rapid*.

13. The *Rapid* then made several tacks in order to see if there were more men in the water. But, as none were seen, and Rehderer, notwithstanding all the exertions of those on board, gave no sign of recovering, and the other man also required care, they rowed to Saint Mary's for medical assistance. Whilst so proceeding they passed quantities of boxes, clothes, and trunks which they did not stop to pick up, being anxious to obtain assistance for the two men. Having reached Saint Mary's they procured medical assistance and carried Rehderer to an hotel. He and the other man recovered.

14. Those on board the *O. and M.* in a break of the fog saw two masts of the *Schiller* on the Retarrier Reef, about three-quarters of a mile south-east by east of the Bishop Rock Lighthouse, and about three-quarters of a mile from where the *O. and M.* then was. They

went towards her as fast as they could, shipping large quantities of water as they did so. On getting near they saw that one mast had gone by the board since they had first seen her and they heard shouts. They rowed through a large quantity of wreckage and got to a man in the water nearly lifeless, whom with difficulty they got on board. By the violence of the sea a piece of the wreckage was knocked up against the *O. and M.*, unshipping her rudder, which hindered them for some time. When this was put right they rowed up to six other men whom they saw struggling in the water, and succeeded after much difficulty in rescuing four out of the six. The *Schiller* at this time was about a quarter of a mile distant, one mast still standing and the rigging crowded with people whose cries could be distinctly heard. **Salvage.**

15. The *O. and M.* now had in her five hands beside her crew, and was completely unsafe and getting unmanageable owing to the quantity of water in her. The people they had rescued were in a lifeless condition, and the first one got on board apparently dying. Those on board the *O. and M.* were therefore bound for the preservation of the lives they had rescued and for the safety of their own to proceed at once to Saint Mary's. They rowed as fast as they could, the sea running so heavily that it was impossible to set sail until they got inside the neck of Crebawithen. They then set sail and got to Saint Mary's between seven and eight a.m. Took the five men to an hotel, the first one that was rescued, whose name was West, having to be carried there. All these men recovered.

16. Whilst proceeding to Saint Mary's the crew of the *O. and M.* took off their own clothes and wrapped up the rescued men in them and did all they could to promote warmth and circulation. Some of the crew had to be kept baling.

17. The crew of the *O. and M.* caught at Saint Mary's a steamboat going to Penzance with her steam already up. She immediately proceeded to the wreck taking the lifeboat and the *O. and M.* in tow. One of the crew of the *O. and M.* being a licensed Trinity House pilot went on board the steamboat and directed her to the wreck. The fog still continued very thick.

18. The sea was so heavy that the steamboat shipped large quantities of water and three planks of the *O. and M.* two on one side and one on the other, were stove by the sea, so that she had to be cast off at Crebawithen and proceeded to Saint Mary's to repair. The *O. and M.* was the first boat at the wreck.

19. Those on board the *Guinevre* a little time after those on board the *O. and M.* saw the *Schiller* in a break of the fog, went up to her, rowing through a quantity of wreckage, and saw two men floating in the water. These with great difficulty and risk they succeeded in getting into the *Guinevre*. Both were in an exhausted condition.

20. The *Guinevre* being in danger of being stove by the wreckage, those on board her determined to proceed to Saint Mary's, both for the safety of the men they had on board and to get more assistance. They got to Saint Mary's about seven a.m. Some of the crew took the two men on shore. These men recovered. Stephen Hicks went to the office of the German Vice-Consul, the *Schiller* being a German vessel, and reported the disaster to him. This was the first intimation he had of it. Whilst going to Saint Mary's the *Guinevre*

**Salvage.** met two fishing boats. The crew of the *Guinevre* told those in the fishing boats of the accident and where to go. The fishing boats went and saved five other lives.

21. By the aforesaid services of the plaintiffs ten lives were saved, and the news of the disaster was first made known at Saint Mary's, the principal island, from whence other and further assistance was dispatched, and to the two fishing boats who saved five lives.

22. The services of the plaintiffs, the crews of the four boats, were rendered at great risk to themselves.

23. A small portion only of the stores and hull of the *Schiller* have been saved, but various valuable portions of her cargo have been saved. The total value of the property saved is £40,000.

The plaintiffs claim :—

1. Such an amount of salvage as to the Court may seem just.
2. Their costs of this action.
3. Such further or other relief as the nature of the case may require.

(Title.)

*Statement of Defence.*

1. The defendants admit the statements of fact in paragraphs 1 to 22, both inclusive, of the statement of claim.

2. The services of the plaintiffs to the passengers of the *Schiller* were rendered at some risk to themselves, but not at great risk as alleged.

3. The said passengers were not the owners of the cargo proceeded against in this action, and the plaintiffs rendered no services to and did not attempt to save the said cargo or the owners thereof. Such cargo was saved under the circumstances in the next article mentioned.

4. Some time after the wreck of the *Schiller*, and after the vessel was partially broken up and with her cargo had sunk in deep water and had been abandoned by all concerned, the defendants determined to endeavour to raise six barrels of specie belonging to them, and which were known to be in the vessel's hold. The defendants thereupon engaged a staff of divers and workmen and worked for many weeks at great expense and with great uncertainty as to the success of their operations. During this time and so long as it remained doubtful whether the operations would not be altogether unprofitable, the plaintiffs did not profess to be interested in or to have a claim against the cargo in respect of which the operations were proceeding.

5. After many weeks of unsuccessful and unremunerative operations, the defendants succeeded in raising four of the barrels of specie and a portion of the contents of another barrel of the total value of £40,000, and the specie so saved was conveyed to Penzance. This specie is the cargo proceeded against in this action.

6. After the arrival of the specie at Penzance, the plaintiffs were induced by persons who had taken no part in the salvage services to put forward the claim made in this action, and they consented to do so upon being indemnified against liability for costs; and this action is being prosecuted in the plaintiffs' names under such indemnity.

7. Upon the arrival of the specie at Penzance it was arrested in two distinct actions by or in the names of certain of the plaintiffs in the

present consolidated actions, and a third action was afterwards instituted against it on behalf of others of the said plaintiffs. The said actions were all commenced by the instructions of the same person acting or professing to act as agent for the plaintiffs and through the same solicitor, and the claim of the plaintiffs might and ought to have been put forward if at all in one action. Salvage.

8. Numerous portions of the *Schiller* and of her tackle, apparel, and furniture had been saved and recovered by persons other than the defendants prior to the commencement of these actions, but the plaintiffs made no attempt to enforce a claim against such property.

9. The plaintiffs respectively have received, or are entitled to receive, and can upon application receive from the passengers to whom they rendered the said services, and from the owners of the *Schiller* and from the German Government, ample remuneration for their said services.

The *Schiller* at the time of her loss was a German ship, sailing under the German flag, and by the law of Germany the ship and the owners thereof and the passengers themselves are liable for the remuneration of the services in the statement of claim mentioned, and the defendants as owners of the cargo on board the said ship are not in the circumstances aforesaid liable for such remuneration.

(Title.)

Reply.

1. It is not true as stated in the 4th paragraph of the statement of defence that during the time therein mentioned the plaintiffs did not profess to be interested in or to have a claim against the cargo therein mentioned.

2. The several allegations in the 6th paragraph are untrue. It is further untrue as stated in the 7th paragraph that the actions therein mentioned were all commenced by the instructions of the same person, or that the claim of the plaintiffs might or ought to have been put forward in one action. The costs of the separate institutions of the two suits and one action are trifling. The several allegations in paragraphs 6 and 7 are immaterial.

3. It is not true that any portion of the *Schiller*, or of her tackle, apparel, or furniture, which were or are of any appreciable value, had or have been saved or recovered.

4. It is true as stated in paragraph 10 that the *Schiller* was at the time of her loss a German ship sailing under the German flag, but with this exception the several allegations in paragraphs 9 and 10 are untrue.

5. At the time of the render of the services stated in the statement of claim the *Schiller* was a ship stranded or in distress on the shore of a sea or tidal water situate within the limits of the United Kingdom, and the services so stated were rendered wholly or in part in British waters.

6. Except as hereinbefore appears, the plaintiffs join issue on the defendants' statement of defence.

(Title.)

Rejoinder.

The defendants join issue upon the several paragraphs of the reply.

3.

No. 26 (J. A.)

(Title.)

*Statement of Claim.*

Salvage.  
(Ship and  
Cargo).

1. The *Brazilian* is a screw steamer belonging to the port of Newcastle, of the burden of 1359 tons gross registered tonnage, and propelled by engines of 130-horse power, and at the time of the rendering of the salvage services hereinafter mentioned she was navigated by her master and a crew of twenty-four hands. She left the port of Newcastle on the 27th of November, 1873, on a voyage to Genoa, and thence by way of Palmaras and Aguilas to the Tyne, and about 10 a.m. on the 26th of December, 1873, in the course of her homeward voyage, with a cargo of merchandise, she was off the coast of Portugal, the Island of Ons bearing about S. E. by E., when those on board her sighted a disabled steamer about four points on their starboard bow, in-shore, flying signals of distress. A strong gale was blowing at the time, and there was a very heavy sea running.

2. The *Brazilian* at once made towards the disabled steamer, which proved to be the *Campanil*, the vessel proceeded against in this action. She was heavily laden with a cargo of iron ore. The *Brazilian*, as she approached the *Campanil*, signalled to her, and the *Campanil* answered by signal that her engines had broken down. By this time the *Campanil* was heading in-shore, rolling heavily, and shipping a large quantity of water. The *Brazilian* came under the lee of the *Campanil* and asked if she wanted assistance. Her master replied that he wanted to be towed to Vigo, as his vessel had lost her screw. The master of the *Brazilian* then asked those on board the *Campanil* to send him a hawser, and for a long time those on board the *Brazilian* made attempts to get a hawser from the *Campanil*, and exposed themselves and their vessel to great danger in doing so. The wind and sea rendering it impossible to get the hawser whilst the *Brazilian* was to leeward of the *Campanil*, the *Brazilian* went to windward and attempted to float lines by means of life buoys to the *Campanil*. During all this time the *Campanil* was quite unmanageable, and yawed about, and there was very great difficulty in manœuvring the *Brazilian* so as to retain command over her and keep her near the *Campanil*. It was necessary to keep constantly altering the engines of the *Brazilian*, setting them on ahead and reversing them quickly, and in consequence the engines laboured heavily, and were exposed to great danger of being strained.

3. Whilst the *Brazilian* was endeavouring to float lines to the *Campanil*, the *Campanil* made a sudden lurch and struck the *Brazilian* on her port quarter, knocking in her port bulwark and rail, and causing other damage to the vessel. After many unsuccessful efforts by those on board the *Brazilian*, and after they had lost two life buoys and a quantity of rope, a hawser from the *Campanil* was at length made fast on board the *Brazilian*, and the *Brazilian*, with the *Campanil* in tow, steamed easy ahead. A second hawser was then got out and made fast with coil springs, and the *Brazilian* then commenced to tow full speed ahead, each hawser having a full scope of ninety fathoms.

4. The *Brazilian* made towards Vigo, which was about thirty five

miles distant; the vessels made about two knots an hour, the *Brazilian* keeping her engines going at full speed. The *Brazilian* laboured very heavily, and both vessels shipped large quantities of water. Salvage.

5. About noon one of the tow-ropes broke, and both vessels were in danger of being driven ashore, broken water and rocks appearing to leeward, distant about two miles. After great difficulty the broken hawser was made fast again with a heavy spring of a number of parts of rope, and the *Brazilian* towed ahead under the lee of Ons Island.

6. Shortly afterwards the weather moderated and the sea went down a little, and the *Brazilian* was able to make more way, and about 7 p.m. the same day she towed the *Campanil* into Vigo harbour in safety.

7. The *Brazilian* was compelled to remain in harbour the next day to pay port charges and clear at the Custom House.

8. The coast off which the aforesaid services were rendered is rocky and exceedingly dangerous, and strong currents set along it, and but for the services rendered by the *Brazilian* the *Campanil* must have gone ashore and been wholly lost, together with her cargo, and in all probability her master and crew would have been drowned. No other steamer was in sight, and there was not any prospect of any other efficient assistance.

9. In rendering the said services the *Brazilian* and those on board her were exposed to great danger. Owing to the heavy sea, and the necessity of towing with a long scope of hawser there was great danger of fouling the screw of the *Brazilian*, and it required constant vigilance on the part of the master and crew to prevent serious accident. The master and crew of the *Brazilian* underwent much extra fatigue and exertion.

10. The damage sustained by the *Brazilian* in rendering the said services amounts to the sum of £150, and the value of the extra quantity of coal consumed in consequence of the said services is estimated at £16, and £4 1s. 5d. was paid by the owners of the *Brazilian* for harbour dues and other charges at Vigo.

11. The value of the *Campanil*, her cargo and freight, at the time of the salvage services were as follows, that is to say: The *Campanil* was of the value of £13,000, her cargo was of the value of £300, and the gross amount of freight payable upon delivery of the cargo laden on board her at Barrow-in-Furness was £675.

12. The value of the *Brazilian*, her freight and cargo, was about £25,050.

The plaintiffs claim:—

1. Such an amount of salvage as to the Court may seem just:
2. That the defendants and their bail be condemned in costs:
3. Such further or other relief as the nature of the case may require.

(Title.)

Statement of Defence.

1. The defendants say that upon the 22nd of December, 1873, the iron screw steamship *Campanil*, of the burden of 660 tons register gross, propelled by engines of 70-horse power, navigated by David Boughton, her master, and a crew of sixteen hands, left Porman, bound to Barrow-in-Furness, laden with a cargo of iron ore.

**Salvage.** 2. At about 8 a.m. of the 26th of December, whilst the *Campanil* was prosecuting her voyage, the shaft of her propeller broke outside the stern tube, and she lost her propeller. The *Campanil* was then brought to the wind, which was south by east, blowing fresh, and she proceeded under sail for Vigo, and continued to do so till about 9.30 a.m., when two steamships which had been for some time in sight, and coming to the northward, approached the *Campanil*. The ensign of the *Campanil* was hoisted, union up, as a signal to one of such steamships, which afterwards came to the *Campanil*, and proved to be the *Brazilian*, whose owners, master, and crew are the plaintiffs.

3. The *Brazilian* then signalled the *Campanil*, and inquired what was the matter, and was signalled in reply that the *Campanil* had lost her propeller, and required to be towed to Vigo, upon which the *Brazilian* signalled for the rope of the *Campanil* in order to take her in tow. After this the *Brazilian* steamed round the *Campanil* and up on to her starboard bow, and in so doing the *Brazilian* came with her port quarter into the starboard bow of the *Campanil* and did her considerable damage.

4. The *Brazilian* then threw a heaving line on board the *Campanil*, and one of the *Campanil's* hawsers was attached to the line and hauled on board the *Brazilian*, which passed one of her hawsers to the *Campanil* by means of life buoys, and when such hawser had been secured between the two vessels the *Brazilian* commenced to tow the *Campanil* for Vigo, it being at this time about 10.30 a.m., and Ons Island then bearing about south-east by south, and distant about fifteen miles.

5. The *Brazilian* proceeded with the *Campanil* in tow, but, owing to the two vessels being laden, and to the small power of the *Brazilian*, she was only able to make very slow progress with the *Campanil*, and it was not until 6.30 p.m. of the said day that the *Brazilian* arrived at Vigo with the *Campanil*, which then came to anchor off the town there.

6. The defendants on the day of tendered to the plaintiffs and have paid into Court the sum of £350 for the services so as aforesaid rendered to the *Campanil* and her said cargo and freight, and offered to pay the costs, and submit that the same is ample and sufficient.

(Title.)

Reply.

1. The plaintiffs admit the first and second articles of the Answer, and they admit that the *Brazilian* came into collision with the *Campanil*, and caused slight damage to the *Campanil*, but, save as aforesaid, they join issue upon the statement of defence.

4.

(Title.)

Statement of Claim.

**Distribu-  
tion of  
salvage.** 1. The defendants are and were at the times hereinafter mentioned the owners of the *Navarino*, an iron screw steamship of 2175 tons register and navigated by a crew of sixty-two hands all told, and

the plaintiffs at such times formed part of such crew and served on board the said steamship in the respective capacities, following:— William Bennett, John William Johnson, and John Evison, as quartermasters; George Tong, George Short, and Robert Burns, as able seaman; Arthur Brook, as ordinary seaman; Joseph Allen, William Freeman, Henry Brewer, Daniel Levenson, Henry Weather-son, James Dewa, and Francis Loosemoore, as firemen; Charles Hope, as leading stoker; and Alfred Cooke, as greaser.

Salvage.

The material facts of the circumstances of the service having been stated, proceed.

11. The owners of the *Rosario* (the salved ship) and of her cargo have paid to the defendants, and the defendants have accepted, the sum of £750 for the services so rendered to the *Rosario*, but the defendants, though requested to do so, have refused to pay the plaintiffs their equitable portion of the said sum.

And the plaintiffs claim:—

1. A declaration that they are entitled to an equitable proportion of the said sum of £750.
2. That the defendants be ordered to pay such proportion to the plaintiffs, together with the costs of this suit.
3. Such further and other relief as the nature of the case may require.

(Title.)

*Statement of Defence.*

1. The defendants admit the truth of the first three paragraphs of the statement of claim.

2. The defendants admit that the *Navarino* fell in with and towed the *Rosario* to Gibraltar on the occasion in the statement of claim mentioned, but they deny the truth of the statement that the *Rosario* was lying in the trough of the sea quite unmanageable, and say that the service was performed in moderately fine weather without difficulty or danger to the plaintiffs, and that the service was mainly performed by the *Navarino* herself by means of her steam power.

3. The *Rosario*, after the performance of the said service, went to Scotland and did not come within the jurisdiction of this Court, and the defendants, who reside in Hull, did not and were unable to enforce the claim of themselves and the master and crew of the *Navarino* to salvage in respect of the said service.

4. The crew of the *Navarino* having made frequent applications to the defendants for the payment of their shares of the salvage in respect of the said services, and constantly importuning the defendants in respect thereof, although the defendants had not received any amount in respect of such salvage, and had not agreed with the owners of the *Rosario* as to the amount to be received, the defendants determined to purchase their respective shares of the salvage from such of the crew as wished for an immediate payment, and, accordingly, by an indenture dated the 11th day of June, 1875, between the several persons, whose names are thereunto subscribed and seals are affixed of the one part, and the defendants of the other part, the said several persons, parties thereto of the first part, including all the plaintiffs except George Short and Robert Burns, in consideration of the respective sums set opposite to their re-



**Salvage.** spective names in the fourth column of the said schedule, paid by the defendants to the said parties of the first part, each of the said parties of the first part assigned to the defendants all and every the share, right, title, and interest of the said parties of the first part in the salvage or salvage reward and remuneration then due, or thereafter to be due, or paid, or awarded in respect of the salvage services set forth in the statement of claim, with power for the defendants to sue for, receive, and give receipts for the salvage, and to use the names of the said parties of the first part. The defendants crave leave to refer to the said indenture.

5. The sums so paid to the said plaintiffs respectively other than George Short and Robert Burns were as follows:—

	£	s.	d.
William Bennett ... ..	1	0	0
John William Johnson ... ..	1	0	0

(And so on £1 each.)

6. In the month of March, 1876, the *Rosario* being about to come within the jurisdiction of this Court, her owners agreed to settle with the defendants for the said salvage, and paid the defendants in settlement thereof the sum of £750 by a bill at three months' date.

7. In rendering the said service, the *Navarino* was delayed on her voyage, and consumed an extra quantity of coals, and her hawsers were injured, and a loss of about £100 was thereby incurred by the defendants. The master of the *Navarino* having taken upon himself the responsibility of rendering the service, the defendants have paid him the sum of £125 as his share of the salvage.

8. The defendants legally tendered to each of the plaintiffs, George Short and Robert Burns, the sum of £4 in respect of his share of the salvage before this action was brought, but each of them respectively refused to accept such sums. The defendants have brought such sums into Court ready to be paid to the said plaintiffs.

9. The defendants submit that the sum of £4 so tendered to each of the said lastly-named plaintiffs was and is sufficient, and that the other plaintiffs are bound by the said indenture, and that the sums paid to them respectively thereunder were reasonable and fair.

(Title.)

*Reply and Demurrer.*

1. The plaintiffs join issue on the 2nd, 8th, and 9th paragraphs of the statement of defence.

2. The plaintiffs do not admit the statements contained in the 3rd and 7th paragraphs of the statement of defence.

3. The plaintiffs demur to the 4th and 5th paragraphs of the statement of defence, and say that the same are bad in law on the ground that the said agreement therein set out is void and inoperative under the provisions of the Merchant Shipping Act, 1854, and on other grounds sufficient in law to sustain this demurrer.

5.

(Title.)

*Statement of Claim.*

**Towage.** 1. On the 1st day of April, 1877, the ship *L. A.*, whereof the defendants are the owners, homeward bound, arrived off Southend,

and here the master of the said ship thereupon agreed to engage the steam-tug *E.*, whereof the plaintiffs are the owners, to tow the said ship up the Thames to St. Katherine's Dock for reward in that behalf. Towage.

2. The *E.* took the said ship in tow, and continued in charge of her until she was placed in the said dock.

3. For the said services so rendered to the said ship as aforesaid there is due to the plaintiffs the sum of £

4. The defendants have refused to pay the said sum of £ , and the same is still due and owing to the plaintiffs.

The plaintiffs claim :—

1. Judgment pronouncing for the claim of the plaintiffs.
2. The condemnation of the defendants, and their bail in the costs of this action.
3. Such further or other relief as the case may require.

(Title.)

*Statement of Defence and Counterclaim.*

1. The defendants admit the allegations in paragraphs 1, 2, and 4 of the statement of claim, and say further that it was an implied condition of the agreement mentioned in paragraph 1 that the said ship *L.* should be safely and properly, and with reasonable care, towed to the said dock.

2. The defendants deny that a sum of £ is due to the plaintiffs as alleged in paragraph 3 of the statement of claim.

3. The defendants say that at a time when the said steam-tug *E.* was in charge of the *L.*, and as the vessels were proceeding up St. Clement's Reach with about 150 feet of tow rope between the said vessels, the said tug and ship came in sight of a ship or vessel the *M.*

4. The wind was then south-west, the tide flood running from two to three knots an hour; the *M.* was under sail and beating up the river and standing over on the port tack heading to the northward and westward.

5. The *E.*, without receiving orders from the pilot, ported her helm and attempted to tow the *L.* ahead of the *M.*; but in so doing the stem of the *L.* struck the *M.* amidships on the starboard side, and the *L.* was in consequence thereof greatly damaged.

6. Such damage was caused by the negligent navigation and management of the *E.*, and in consequence of acting without the orders of the pilot, and was a breach of the said contract entered into between the master of the steam-tug *E.* and the ship *L.*, and releases the defendants from payment of the said sum of £ .

7. And by way of counterclaim the defendants repeat the allegations contained in paragraphs 3, 4, and 5 of the statement of defence.

The defendants claim :—

1. A declaration that the defendants are entitled to the damage occasioned to them by reason of the said collision.
2. The condemnation of the plaintiffs, and their bail in such damages and in costs.
3. That the accounts and vouchers relating to such damage should be referred to the registrar, assisted by merchants, to report the amount thereof.

Collision.

4. Such further or other relief as the nature of the case may require.

(Title.)

Reply.

The plaintiffs join issue upon the defendants' statement of defence and counterclaim.

6.

No. 11 (J. A.).

(Title.)

Statement of Claim.

Collision  
(Sea).

1. Shortly before 8 a.m. on the 9th of December, 1874, the brigantine *Katie*, of 194 tons register, of which the plaintiffs were owners, manned by a crew of eight hands all told, whilst on a voyage from Dublin to St. John's, Newfoundland, in ballast, was in latitude about 46° N., and longitude 40° 42' W., by account.

2. The wind at such time was about W. by S., a strong breeze, and the weather was clear, and the *Katie* was under double-reefed mainsail, reefed mainstaysail, middle staysail, lower topsail, reefed forestaysail, and jib, sailing full and by on the port tack, heading about NW.  $\frac{1}{2}$  N., and proceeding at the rate of about five knots and a half per hour.

3. At such time a steamship under steam and sail, which proved to be the screw steamship *American*, was seen at the distance of three or four miles from the *Katie*, broad on her port bow, and steering about E. or E. by S. The master of the *Katie* not having been able to take observations for several days, and her chronometer having run down, and the said master wishing to exchange longitudes with the *American*, caused an ensign to be hoisted, and marked his longitude by account on a board which he exhibited over the port side. The *Katie* was kept full and by, and the *American* approached rapidly, and attempted to pass ahead of the *Katie*, and caused immediate danger of collision, and although thereupon the helm of the *Katie* was put hard a-port and her mainsheet let go, the *American* with her stem struck the *Katie* on her port side, almost amidships, cutting her nearly in two, and the *Katie* sank almost immediately, her crew being saved by the steamer.

4. The *American* improperly neglected to keep clear of the *Katie*.

5. The *American* improperly attempted to pass ahead of the *Katie*.

6. The *American* improperly neglected to ease her engines, and improperly neglected to stop and reverse her engines in due time.

The plaintiffs claim :—

1. That it may be declared that the plaintiffs are entitled to the damage proceeded for.
2. That the bail given by the defendants be condemned in such damage and in costs.
3. That the accounts and vouchers relating to such damage be

referred to the registrar, assisted by merchants, to report the amount thereof. Collision.

4. Such further and other relief as the nature of the case may require.

(Title.)

*Statement of Defence.*

The defendants say as follows :—

1. The *American* is a screw steamship, of 1368 tons register, with engines of 200-horse power nominal, belonging to the port of Liverpool, and at the time of the occurrences hereinafter mentioned was manned by a crew of forty hands all told, laden with a cargo of general merchandize, and bound from Port-au-Prince in the West Indies to Liverpool.

2. About 8.5 a.m., on the 28th of November, 1874, the *American* was in latitude 46° N., longitude 38° 16' W., steering E. by S. true magnetic, making under all sail and steam about 12 knots an hour, the wind being about SW. by S. true magnetic, blowing a strong breeze and the weather hazy, when a vessel, which afterwards proved to be the brigantine *Katie*, was observed on the *American's* starboard bow about four miles distant, bearing about SE. by E. true magnetic, close-hauled to the wind, and steering a course nearly parallel to that of the *American*.

3. The *American* kept her course, and when the *Katie* was about three miles distant, her ensign was observed by those on board the *American* run up to the main, and she was seen to have altered her course, and to be bearing down towards the *American*. The *American's* ensign was afterwards run up, and her master, supposing that the *Katie* wanted to correct her longitude or to speak the *American*, continued on his course, expecting that the *Katie* when she had got sufficiently close to speak or show her black board over her starboard side, would luff to the wind, and pass to windward of the *American*.

4. The master of the *American* watched the *Katie* as she continued to approach the *American*, and when she had approached as near as he deemed it prudent for her to come, he waved to her to luff, and shortly afterwards on his observing her to be attempting to cross the bows of the *American*, the helm of the latter was immediately put to starboard, and engines stopped and reversed full speed ; but, notwithstanding, the *American* with her stem came into collision with the port side of the *Katie* a little forward of the main rigging.

5. The *American's* engines were then stopp'd, and when the crew of the *Katie* had got on board of the *American*, the latter's engines were reversed to get her clear of the *Katie*, which sunk under the *American's* bows.

6. The *Katie* improperly approached too close to the *American*.

7. Those on board the *Katie* improperly neglected to luff, and to pass to windward of the *American*.

8. Those on board the *Katie* improperly attempted to cross the bows of the *American*.

9. Those on board the *Katie* improperly ported her helm before the said collision.

Collision. 10. Those on board the *Katie* improperly neglected to starboard her helm before the said collision.

(Title.)

Reply.

The plaintiffs join issue upon the defendants' statement of defence.

7.

(Title.)

Statement of Claim.

**Collision (River).** 1. Shortly before 7.45 on the evening of the 19th of May, 1880, the screw steamer *Lucent*, of which the plaintiffs are owners, of 955 tons register, was in Limehouse Reach of the River Thames, bound for the River Tyne, in water ballast. She was manned by a crew of twenty hands, all told, and had two passengers on board, and was in charge of a Trinity House pilot.

(Alternative claim against two ships.)

2. The weather was then fine and it was daylight. The tide was last quarter flood, running about one knot per hour, and there was little or no wind. The regulation lights on board the *Lucent* were duly exhibited, and were burning brightly, and a good look-out was kept on board her.

3. At that time the *Lucent*, which had shortly before come out of the Surrey Commercial Docks, had about straightened down the river, and was steaming down rather to the south of midstream, at the speed of from one to two knots per hour. In these circumstances those on board her saw the steamship *Allegro* coming up the river about half a mile distant, and about two points on the port bow. The *Lucent* thereupon first stopped her engines and then put them on slow ahead, with a port helm, and then stopped them again and steadied her helm, the two vessels being in a position to pass side to port side; the *Allegro*, however, as she approached, was seen to be coming off as if under starboard helm, and, though she was loudly hailed and the engines of the *Lucent* were put full speed astern and her helm hard a-port, the *Allegro* came on with undiminished speed, and with her stem out into the port bow of the *Lucent*, and did her great damage.

4. At or about the time when the *Allegro* so came into collision with the *Lucent*, a screw steamship called the *Onward*, whose owners are the defendants, the Great Northern Steamship Fishing Company, was also coming up the river, and passed near the *Allegro* on her north or starboard side. The defendants, the owners of the *Allegro*, allege that the *Onward* was passing dangerously close to the *Allegro*, and that the suction caused by her so passing prevented the *Allegro* from answering her port helm, or threw the *Allegro's* head to port and into the *Lucent*, and they therefore deny that the *Allegro* caused or contributed to the collision.

5. The defendants, the Great Northern Steamship Fishing Company, deny that their vessel caused or contributed to the collision, and say that it was caused by the *Allegro* only.

6. The plaintiffs are therefore in doubt which of the two vessels caused the collision, or whether the collision was not caused by the joint bad navigation of both vessels, and joint negligence of those on board both vessels. Collision.

7. Both sets of defendants admit, and it is the fact, that the collision was not caused or contributed to by the plaintiffs, or by any of those on board the *Lucent*, and that it was caused by the bad navigation of one or other (if not both) of the vessels *Allegro* and *Onward*; but each set insists that the other is liable for the collision.

The plaintiffs claim as follows :

1. That it may be determined as between them and all the defendants which if either of the defendants is liable to the plaintiffs.
2. That it may be declared that the defendants, the owners of the *Allegro*, or the defendants, the Great Northern Steamship Fishing Company, or all the defendants, are liable to the plaintiffs for the damage occasioned to the plaintiffs by the collision, and that there may be judgment against such defendants, and if and so far as it may be against the defendants, the owners of the *Allegro*, also against their bail, for the damage occasioned to the plaintiffs by the collision, and for the costs of this action.
3. That in such costs may be included such costs (if any) as the plaintiffs may be ordered to pay to either of the two sets of defendants by reason of their having been joined in this action.
4. Such further and other relief as the nature of the case may require.

(Title.)

*Statement of Defence of the Defendants, the Owners of the "Allegro."*

1. Between 7.30 p.m. and 7.45 p.m. on the 19th day of May, 1880, the Swedish screw steamship *Allegro*, of 775 tons register, of which the defendants were owners, whilst on a voyage from Ljusne, in the Gulf of Bothnia, to London, with cargo and one passenger, was rounding Millwall Point into Limehouse Reach in the River Thames. She was in charge of a duly licensed Trinity pilot.

2. The wind at such time was about north-west, the weather was fine and it was daylight, and the tide was flood and of the force of about one knot per hour, and the *Allegro* was proceeding at the rate of about three knots per hour, with a good look-out being kept.

3. At such time the *Lucent* was seen at the distance of about three-quarters of a mile to a mile from the *Allegro*, a little on her starboard bow, and coming down the Reach about midchannel. The *Allegro* kept her port helm, and her engines were stopped, and she straightened up the Reach, and the two vessels were then in a position to pass each other port side to port side, and the engines of the *Allegro* were set on easy ahead.

4. As the *Allegro* and *Lucent* were approaching one another, in a position to pass port side to port side, a steamship called the *Onward* was seen to be coming up rapidly, overtaking the *Allegro*, and proceeding to pass dangerously close to her on her starboard side. By

Collision. order of her pilot, the engines of the *Allegro* were put full speed ahead and her helm was put hard a-port, but owing to the proximity of the *Onward*, and the suction caused by her, the *Allegro* did not answer her port helm, and her head fell off to port. The engines of the *Allegro* were by order of her pilot reversed full speed astern, and after they had been reversing for some time her helm was, by his order, put hard a-starboard, but the *Allegro* with her stem came into collision with the port bow of the *Lucent*.

5. Save as herein admitted, the defendants deny the truth of paragraphs 2 and 3 of the statement of claim.

6. The said defendants do not admit the truth of paragraph 5 of the statement of claim.

7. The said defendants say that the collision was not occasioned by any negligence on the part of the defendants or of those on board the *Allegro*, and they do say that it was caused by the *Onward* coming too close as aforesaid, and they do not attribute blame to the *Lucent*.

8. The defendants further say that before and at the time of the said collision the *Allegro* was being navigated within a district and under circumstances in which it was compulsory by law that she should have on board, and be in charge of, a duly qualified pilot for such district, and that if, and so far as, the said collision was occasioned by any negligent or improper navigation of the *Allegro*, it was solely occasioned by some fault or incapacity of the said pilot, who was a qualified pilot acting in charge of the *Allegro* within a district where the employment of such pilot was compulsory by law, within the meaning of the 388th section of the Merchant Shipping Act, 1854.

(Title.)

*Statement of Defence on behalf of the Great Northern Steamship Fishing Company, Owners of the "Onward."*

1. About 7 p.m. on the 19th May, 1880, the screw steamship *Onward*, of            tons register, and of            horse power, of which the defendants, the Great Northern Steamship Fishing Company, are the owners, manned by a crew of            hands all told, was in the River Thames on a voyage from the North Sea to London.

2. The weather at such time was fine, the tide was flood, running about one knot an hour, and the wind was about north-west, and the *Onward* was proceeding up Blackwall Reach to the northward of mid-channel at the rate of about nine knots an hour, with a good look-out kept on board of her.

3. At such time the *Allegro*, which had previously been seen proceeding up the river, was more particularly noticed about a quarter of a mile distant, and a little on the port bow of the *Onward*; and the *Onward* being the faster vessel of the two had been overhauling her, and as at this time the *Onward* was approaching the top of the Blackwall Reach her engines were eased until she had rounded the Point. After rounding the Point, and on seeing all was clear above the Point, the *Onward* again proceeded at full speed, and as she was drawing up to the quarter of the *Allegro*, the *Lucent* was observed to be coming down.

4. Those on board the *Onward* then observed the *Allegro*, which had a clear eye and might have kept her course, and might, if necessary, have given the *Lucent* more room, going off towards the *Lucent* as if under a starboard helm, and although the *Allegro* was hailed by those on board the *Lucent* she continued to proceed towards the *Lucent*, and with her stem struck the *Lucent* on the port bow and did her much damage. The *Onward*, which was proceeding to pass well clear of the *Allegro*, was never in danger of collision with either vessel, and at the time of the collision was above both vessels. Collision.

5. The defendants, the owners of the *Onward*, do not know whether the said collision was caused by any neglect or default on the part of those on board the *Lucent*, and must not be taken as admitting or that it is the fact that the collision was not caused or contributed to by those on board the *Lucent*.

6. The defendants, the owners of the *Onward*, allege that the said collision was caused by the neglect or default of those on board the *Allegro* in not keeping on their course, and in improperly starboarding her helm, and in not duly easing and stopping and reversing her engines before the said collision, and in not keeping a good look-out, or by one or more of such acts and defaults.

7. The defendants, the owners of the *Onward*, deny that the said collision was caused by the bad navigation of the *Onward*.

8. Save as hereinbefore admitted, the truth of the allegations in the statement of claim is denied.

(Title.)

Reply.

1. The plaintiffs join issue upon the statement of defence of the defendants, the owners of the steamship *Allegro*.

2. The plaintiffs join issue upon the statement of defence of the defendants, the Great Northern Steamship Fishing Company.

---

8.

(Title.)

Statement of Claim.

1. The *Express* is a foreign vessel of which no owner or part owner was at the time of the institution of this cause domiciled in England or Wales. Damage to cargo.

2. In or about the month of June, 1870, whilst the *Express* was lying in the port of Taganrog, the plaintiff caused to be shipped on board of her a cargo of rye, and the master of the said vessel accepted the same to be carried in the said ship from Taganrog aforesaid to Queenstown, Falmouth, or Plymouth for orders, and thence to a port as ordered under and according to the terms of a certain bill of lading duly signed and delivered by the said master, according to which bill of lading the said goods were to be delivered in the like good order and condition as they were shipped in at a safe afloat port in the United Kingdom, or on the Continent, as per a certain charter-party (the act of God, the Queen's enemies, fire, and all and every other dangers and accidents of the seas, rivers, and navigation of



**Damage to Cargo.** whatever nature and kind soever excepted) unto the plaintiffs of London, or to their assigns, paying freight, gratuity, and demurrage (if any) for the said goods, and other conditions, as per charter-party.

3. The *Express* duly sailed on her said voyage with the said cargo on board, and in the course of the said voyage without any justifiable cause or excuse put into the port of Gibraltar. After the said vessel had so put into the said port, and whilst she was lying there, her master was requested by the plaintiffs to proceed on the before-mentioned voyage, and if he would not do so then to tranship and forward the said cargo.

4. The said master however declined to comply with such request, and remained at Gibraltar with his said vessel, with the said cargo on board of her, a very considerable time.

5. By reason of the premises the said master wrongfully and without justifiable cause, in violation of the terms of the said bill of lading, deviated from and delayed proceeding on the voyage in the said bill of lading mentioned.

6. The plaintiffs were and are the owners of the said cargo, and the holders of the said bill of lading.

7. By reason of the premises, the said cargo became and was greatly heated, damaged, and depreciated, and the said cargo was delivered to the plaintiffs in a much worse order and condition than it was shipped in, this not being occasioned by any of the perils, causes, or matters in the said bill of lading excepted; and thereby the plaintiffs have sustained great loss, and have been deprived of divers profits which they would otherwise have derived from the said cargo.

The plaintiffs claim :—

1. £ for damages.
2. The condemnation of the said vessel, and the defendants and their bail in the same, and in the costs of this action.
3. Such further or other relief as the case may require.

(Title.)

*Statement of Defence.*

**Defence.** 1. In the month of May, 1870, the *Express*, which then was and ever since has been, and still is, a vessel sailing under the flag of the North German Confederation, and belonging to the port of Rostock, in the Duchy of Mecklenburg, one of the States of the said Confederation, and owned by persons being subjects of the said Confederation, was lying in the port of Constantinople, and on the third day of the said month of May, a charter-party was made and entered into between *Wilhelm Freturist*, the master of the *Express*, and Messrs. *Schott and Reppen*, merchants of Constantinople, and subjects of the said Confederation. By such charter-party it was agreed that the *Express*, under the German flag, should proceed to a loading place in the Azoff, as ordered at Berdianski, and there load from the factors of the freighter a full and complete cargo of tallow, wheat, Indian corn, seed, or other stowage goods, at the option of the freighter; and being so loaded should therewith proceed to a safe port in the United Kingdom, or a safe port on the Continent between Havre and Hamburg,

both inclusive, or so near thereunto as she might safely get, calling at Queenstown, Falmouth, or Plymouth, at the master's option, and deliver the said cargo on being paid freight as therein mentioned (the act of God, the Queen's enemies, restraint of princes and rulers, fire, and all and every other dangers and accidents of the seas, rivers, and navigation always excepted).

Damage  
to Cargo

2. In pursuance of the terms of the said charter-party, the *Express* proceeded to Taganrog which was the loading port in the sea of Azoff for which she received orders at Berdianski, and the plaintiffs who were the factors of the freighters within the meaning of the said charter-party caused to be shipped upon the *Express* at Taganrog a cargo of rye in bulk, and the master of the *Express* signed and delivered to the plaintiffs a bill of lading in respect of the said cargo in the words and figures following, that is to say [*the bill of lading should be set out at length*].

3. On the 29th of June, 1870, the *Express* set sail from Taganrog, with the said cargo and proceeded on her voyage, and on the 16th day of August, 1870, cast anchor off Algesiras with the intention of filling up her water casks, strong winds from the north-westward having for some days prevented and still continuing to prevent her from working through the Straits of Gibraltar.

4. After the sailing of the said ship from Taganrog, and before she anchored off Algesiras as aforesaid, war broke out and was declared between the Empire of France and the States of the said Confederation, and such war continued to exist down to and existed at the time when the *Express* anchored off Algesiras as aforesaid, and by reason of such war the *Express* became and was liable to risk of capture.

5. Upon arriving at Algesiras as aforesaid, the master of the *Express* was informed of the outbreak and existence of the said war, and learned that it would be dangerous for the *Express* to proceed upon her voyage owing to the risk of her being captured by French cruisers at sea, and on the 18th day of August, 1870, the master of the *Express*, as he lawfully might do under and by virtue of the laws of Mecklenburg and of the said Confederation, and as was reasonable and proper for him to do under the circumstances herein set forth, sailed with the *Express* from Algesiras and proceeded to and on the same day arrived in the roadstead of Gibraltar, which was a safer and more sheltered anchorage than that of Algesiras. It is not the fact that the master of the *Express* without justifiable cause and excuse, or wrongfully or in violation of the terms of the said bill of lading, put into the port of Gibraltar as alleged in the 3rd and 5th paragraphs of the statement of claim.

6. On the 30th day of January, 1871, the master of the *Express* received intelligence that an armistice had been concluded between France and the said States of the North German Confederation, and thereupon immediately began to prepare the *Express* to proceed upon her voyage, and on the 2nd day of February, 1871, the news of an armistice having been confirmed and the necessary preparations completed, the *Express* set sail from Gibraltar to complete her voyage.

7. From the time of the arrival of the *Express* at Algesiras until the 30th day of January, 1871, the said war continued to exist, and during all such time the *Express* would have been liable to risk of capture if she had attempted to proceed upon her voyage; and during

**Damage to Cargo.**

all such time armed French cruisers were cruising off the Straits of Gibraltar and in the Atlantic Ocean, and in the English Channel, and off the ports of Cork, Falmouth, and Plymouth, with the intention of capturing the *Express* and other North German vessels; and, if the *Express* had during the time aforesaid attempted to proceed on her voyage, she would certainly have been captured by some or one of such cruisers.

8. It is not the fact that the master of the *Express* unjustifiably or in violation of the said bill of lading delayed proceeding on his voyage as alleged in the 5th paragraph of the statement of claim; on the contrary, the said master was always ready and desirous to proceed from Gibraltar as soon as he could do so without being exposed to risk of capture.

9. By the law of the North German Confederation the master of the *Express* was entitled to keep her at Gibraltar whilst she would have been liable to risk of capture at sea by reason of the said war, and the said master was not, whilst the said war and liability of capture continued, under any obligation to attempt to proceed further upon his said voyage; and by the said law the master of the *Express* was not guilty of any breach of contract or duty with or to the plaintiffs in respect of his putting into Gibraltar or remaining there with the *Express* with the said cargo on board of her, or in respect of not transhipping the said cargo.

10. The master of the *Express* sailed from Gibraltar with the *Express* within a reasonable and proper time after receiving notice of the termination of the risk of capture by reason of the said war.

11. On the 17th day of February, 1871, the *Express* arrived in Falmouth Harbour, and her master having duly given notice of his arrival to the charterers' agents in London, on the 20th day of the same month received orders to proceed to London, and on the same day the *Express* left Falmouth, and on the 26th day of February, 1871, arrived in London.

12. On the 28th day of the said month of February, the discharge of the cargo was commenced; and on the 2nd day of March, 1871, such discharge was completed.

13. It is not the fact that the cargo of the *Express* was delivered in worse order and condition than it was in when shipped.

14. If the said cargo was delivered in worse order and condition than it was when shipped, the deterioration was caused by the detention of the *Express* at Gibraltar as hereinbefore mentioned, which is an exceptive peril within the true intent and meaning of the exception of "the Queen's enemies" contained in the said bill of lading, and by the natural condition and inherent vice of the said cargo, or by one of such causes.

15. Whilst the said vessel was detained at Algeiras and Gibraltar as aforesaid, the master of the *Express* used all due and proper, and reasonable care and skill in ventilating, trimming, and otherwise caring for the said cargo, and did all things on his part to be done in taking care of the same, and any deterioration or depreciation of the said cargo was not caused by any neglect or default of the said master, but was caused by the detention of the said vessel as aforesaid, and by the natural condition and inherent vice of the said cargo, or by both

of these causes ; and by the law of the said North German Confederation, regard being had to the terms of the said bill of lading and charter-party, neither the *Express* nor her owners nor the said master is or are liable to damages in respect of the depreciation or deterioration of the said cargo. Damage to Cargo.

16. Save as herein appears the defendants admit the several allegations contained in the statement of claim.

(Title.)

Reply.

The plaintiffs join issue on the defendants' statement of defence.

9.

No. 8 (J. A.).

(Title.)

Statement of Claim.

1. The *Ida* is a vessel of which no owner or part owner was, at the time of the institution of this cause, domiciled in England or Wales (a). Damage to cargo.

2. In the month of February, 1873, Messrs. *L. and Company* of Alexandria, caused to be shipped 6110 ardebs of cotton seed on board the said vessel, then lying in Port Said (Egypt), and the then master of the vessel received the same, to be carried from Port Said to Hull, upon the terms of three bills of lading, signed by the master, and delivered to Messrs. *L. and Company*.

3. The three bills of lading, being in form exactly similar to one another, were and are, so far as is material to the present case, in the words, letters, and figures following, that is to say :—

“ Shipped in good order and well conditioned by *L. & Co.*, Alexandria (Egypt) in and upon the good ship called the *Ida*, whereof is master for the present voyage Ambroizio Chiapella, and now riding at anchor in the port of Port Said (Egypt) and bound for Hull, six thousand one hundred and ten arbeds cotton seed being marked and numbered as in the margin, and are to be delivered in the like good order and well-conditioned at the aforesaid port of Hull (the act of God, the Queen's enemies, fire, and all and every other dangers and accidents of the seas, rivers, and navigation of whatever nature and kind soever, save risk of boats so far as ships are liable thereto, excepted), unto order or to assigns paying freight for the said goods at the rate of (19s.) say nineteen shillings sterling in full per ton of 20 cwt. delivered, with £10 gratuity. Other conditions as per charter-party, dated London, 4th October, 1872, with primage and average accustomed. In witness whereof the master or purser of the said ship hath affirmed to three bills of lading all of this tenor and date, the one of which three bills being

(a) A statement to this effect may be inserted if the action be under sect. 6 of the Admiralty Act, 1861.

Wages.

accomplished the other two to stand void. Dated in Port Said (Egypt) 6th February, 1873. 100 dunnage mats. Fifteen working days remain for discharging."

4. The persons constituting the firm of Messrs. *L. and Company* are identical with the members of the plaintiffs' firm.

5. The vessel sailed on her voyage to Hull, and duly arrived there on or about the 7th day of May, 1873.

6. The cotton seed was delivered to the plaintiffs but not in as good order and condition as it was when shipped at Port Said; but was delivered to the plaintiffs greatly damaged.

7. The deterioration of the cotton seed was not occasioned by any of the perils or causes in the bills of lading excepted.

8. By reason of the premises the plaintiffs lost a great part of the value of the said cotton seed, and were put to great expense in and about keeping, warehousing, and improving the condition of the said cotton seed, and in and about having the same surveyed.

The plaintiffs claim the following relief :—

1. £        for damages, [and the condemnation of the said vessel and the defendant and his bail in the same] :
2. Such further relief as the nature of the case requires.

(Title.)

*Statement of Defence.*

1. They deny the truth of the allegations contained in the sixth, seventh, and eighth articles of the statement of claim.

2. The deterioration, if any, to the cotton seed was occasioned by the character and quality of the cotton seed when shipped on board the *Ida*, and by the inherent qualities of the cotton seed, and by shipping water in a severe storm which occurred on the        day of       , in latitude        during the voyage, or by some or one of such causes.

(Title.)

*Reply.*

The plaintiffs join issue upon the statement of defence.

10.

(Title.)

*Statement of Claim.*Wages.

1. The plaintiff, *W. J.*, on or about August 17th, 1876, entered into an agreement with the owners of the said ship *Nelly Gray* to proceed from New York to Liverpool at the expense of the said owners, and there to take command of the said ship.

2. By the said agreement the wages of the plaintiff were to be at the rate of 125 dollars per month, from August 20th, 1876.

3. The plaintiff having proceeded to Liverpool, according to the terms of the said agreement, took command of the said vessel and continued to command from August 20th to November 20th, 1876.

4. As such master, and whilst he was in command of the said ship, wages became due to the plaintiff; the plaintiff also properly

made the disbursements and incurred the board expenses hereinafter claimed, from August 20th to November 20th, 1876, and such wages, disbursements, and expenses still remain due to him and unpaid, and the plaintiff cannot obtain payment thereof without the assistance of the Court.

Wages.

5. The claim of the plaintiff consists of the following items :—

	<i>£</i>	<i>s.</i>	<i>d.</i>
Wages from 20th August to 20th November, 1876, at 125 dollars (£25) per month... ..	75	0	0
Passage money from New York to Liverpool ..	15	0	0
Ten weeks board in Liverpool at £2 2s. per week...	21	0	0
Marketing for ship, coals for same, and disbursements for hauling and watching same... ..	16	0	0
Total ...	£127	0	0

Together with interest at 5 per cent. on the said sum of £127 until judgment.

The plaintiff claims :—

1. Judgment pronouncing for the claim of the plaintiff.
2. The condemnation of the said ship, the defendant and his bail therein, and the costs of the said action; (*if no appearance by a defendant has been entered, or bail given, add*) and that she be sold by order of the Court, and that the claim of the plaintiff be satisfied from the proceeds of the said sale.
3. Such further or other relief as the nature of the case may require.

(*Title.*)

*Statement of Defence.*

1. The defendant admits the statements in the first, second, and third paragraphs of the statement of claim.
2. The defendant as to the fourth paragraph of the statement of claim says that the plaintiff whilst in command of the said vessel was frequently and habitually in a state of intoxication, and in consequence of his said state the said vessel was detained for three days at Liverpool, whereby the voyage was unnecessarily protracted, and losses were incurred by the defendant through the improper conduct of the plaintiff.
3. The defendant denies that the said expenses and disbursements were necessary or proper.
4. The defendant pays into Court the sum of £15, and says that the same is enough to satisfy the claim of the plaintiff herein.

*Reply.*

The plaintiff takes issue on the defendant's statement of defence, and accepts the said sum of £15 in satisfaction of a part of his claim.

Necessaries.

11.

No. 12 (J. A.)

(Title.)

*Statement of Claim.*

1. The said vessel was and is a British Colonial vessel belonging to the port of Digby, in Nova Scotia, of which no owner or part owner was at the time of the commencement of this action or is domiciled in England or Wales.

2. At the time of the commencement of this action the said vessel was under arrest of this Court.

3. About the month of February, 1868, the said vessel was lying in the port of London, in need of repairs, and of being equipped and supplied with certain other necessaries.

4. By the order of Messrs. *K. L.*, who were duly authorized, the plaintiffs equipped and repaired the said vessel as she needed, and provided the vessel with necessaries, and there is now due to the plaintiffs for such necessary repairing and equipping, and other necessaries, the sum of £305 3s., together with interest thereon from the 19th day of February, 1868.

The plaintiffs claim :—

1. Judgment for the said sum of £305 3s., with such interest thereon as aforesaid until judgment.

2. The condemnation of the ship and the defendant and his bail therein and in the costs of this suit.

3. Such further relief as the nature of the case requires.

(Title.)

*Statement of Defence.*

1. By an instrument of mortgage, in the form and recorded as prescribed by the Merchant Shipping Act, 1854, bearing date the 9th of March, 1867, and executed by *C. M.*, blacksmith, *D. F.*, master mariner, and *W. H.*, farmer, of Weymouth, in the county of Digby, in Nova Scotia, the registered owners of 64-64th parts or shares in the vessel, the said *C. M.*, *D. F.*, and *W. H.*, mortgaged 64-64th parts or shares in the vessel, of which the said *D. F.* was also master, to *G. T.* of Nova Scotia, in consideration of the sum of 5000 dollars advanced by him to the said owners, and for the purpose of securing the repayment by them to him of the said sum with interest thereon.

2. By an instrument of transfer, dated the 16th of July, 1868, in the form prescribed by the said Act, and executed by *G. T.*, in consideration of the sum of 5000 dollars to *G. T.* paid by the defendant, *G. T.* transferred to the defendant the mortgage security.

3. The said sum of 5000 dollars, with interest thereon, still remains due on the said security.

4. The vessel was not under the arrest of this Court at the time of the commencement of this action.

5. The vessel did not need to be equipped or repaired as in the fourth paragraph of the plaintiff's claim mentioned, and she did not at the time of the supply of the articles referred to in the said fourth

paragraph as "necessaries" stand in need of such articles. On the contrary, the said vessel could have gone to sea and proceeded on and prosecuted her voyage without such equipments, repairs, and articles referred to as aforesaid, and such equipments, repairs, and other articles were done and effected and supplied for the purpose of re-classing the said vessel, and not for any other purpose; and the claim of the plaintiffs is not a claim for necessaries within the meaning of the Admiralty Court Act, 1861, s. 5.

Necessaries.

6. The alleged necessaries were not supplied on the credit of the said vessel, but upon the personal credit of *J. B.*, who was the broker for the vessel, and upon the agreement that the plaintiffs were not to have recourse to the vessel.

7. The defendant did not, nor did *G. T.*, in any way order, authorize, or become liable for, and neither of them is in any way liable in respect of the said alleged supplies or any part thereof, and the said vessel was at the time of the commencement of this action, and she still is, of a less value than the amount which, irrespective of the sums referred to in the next article of this answer, is due to the defendant on the said mortgage security.

8. The defendant, in order to save the vessel from being sold by this Court at the instance of certain of her mariners having liens on the said vessel for their wages, has been compelled to pay the said wages, and he claims, if necessary, to be entitled to stand in the place of such mariners, or to add the amounts so paid by him for wages to the amount secured by the said mortgage, and to have priority in respect thereof over the claim of the plaintiffs.

(Title.)

Reply.

1. The plaintiffs admit that 64-64th shares in the said ship, the *Two Ellens*, were on or about the 9th day of March, 1867, mortgaged by the said *C. M.*, *D. F.*, and *W. H.*, all of Weymouth, in the county of Digby, Nova Scotia, to the said *G. T.*

2. Save as aforementioned, all the several averments in the said answer contained are respectively untrue.

3. If there was or is any such instrument of transfer as is mentioned in the second article of the said answer, the same has never been registered according to the provisions of the Merchant Shipping Act, 1854.

4. The said *G. T.* has never been domiciled in or resided in the United Kingdom, and is now resident in Nova Scotia, and the registered owners of the said vessel in the first paragraph of the said defence mentioned were always and are domiciled in Nova Scotia, and resident out of the United Kingdom.

(Title.)

Rejoinder.

The defendant joins issue upon the third and fourth paragraphs of the reply.



## 12.

No. 19 (J. A.)

(Title.)

*Statement of Claim.*Equip-  
ment of  
ship.

1. The plaintiffs were at the time hereinafter stated and are engineers and ironfounders, carrying on business at Liverpool, in the county of Lancaster.

2. In the month of January, 1872, whilst the above-named steamship *Enterprise*, belonging to the port of London, was in the port of Liverpool, the plaintiffs, having received orders from the master in that behalf, executed certain necessary work to her and supplied her with certain necessary stores and materials, and caused her to be supplied upon their credit with certain necessary work, labour, materials, and necessaries, and thereby supplied the said ship with necessaries within the meaning of the fifth section of the Admiralty Court Act, 1861.

3. There is due to the plaintiffs in respect of such supply of necessaries to the said ship the sum of £577 2s. 6d., and the plaintiffs cannot obtain payment thereof without the assistance of the Court.

The plaintiffs claim :—

1. Judgment pronouncing for the claim of the plaintiffs :

2. The condemnation of the defendants and their bail therein, with costs :

3. A reference, if necessary, of the claim of the plaintiffs to the registrar, assisted by assessors, to report the amount thereof :

4. Such further relief as the nature of the case requires.

(Title.)

*Defence.*

1. The defendants deny the allegations contained in the third paragraph of the statement of claim.

2. The defendants admit that the plaintiffs executed certain work to the said ship, and supplied her with certain materials, but they say that a portion of the work so executed was executed badly and insufficiently, and of the materials so supplied, some were bad and insufficient, and a portion of the work in the claim mentioned was done in and about altering and endeavouring to make good such bad and insufficient work and materials. The defendants have paid in respect of the work and materials in the claim mentioned the sum of £356 17s. 9d., and the said sum is sufficient to satisfy the claims of the plaintiffs.

3. The defendants deny the allegations contained in the second paragraph of the claim, so far as they relate to any claim beyond the said sum of £356 17s. 9d., and say that if the plaintiffs did execute any work or did supply any materials other than the work and materials mentioned in the second paragraph of this defence, such work was not necessary work, and such materials were not necessary materials within the meaning of the fifth section of the Admiralty Court Act, 1861, and were not supplied in such circumstances as to render the defendants liable to pay for the same.

(Title.)

Possession.

Reply.

The plaintiffs join issue upon the defendants' statement of defence.

13.

No. 21 (J. A.)

(Title.)

*Statement of Claim.*

1. On or about the 15th of July, 1868, an agreement was entered into between the plaintiff and *J. D.*, who was then the sole owner of the barque *Lady of the Lake*, whereby *J. D.* agreed to sell, and the plaintiff agreed to purchase, 32-64th parts or shares of the vessel for the sum of £500; payment £300 in cash, and the remainder by purchaser's acceptances at three and six months date, and it was thereby agreed that the plaintiff was to be commander of the vessel.

2. The plaintiff accordingly paid to *J. D.* the sum of £300, and gave him his (the plaintiff's) acceptances at three and six months date for the residue of the said purchase-money, and *J. D.* by bill of sale transferred 32-64th parts or shares in the vessel to the plaintiff, which bill of sale was duly registered on the 18th of July, 1868; the plaintiff has since been and still is the registered owner of such 32-64th shares.

3. The vessel then sailed under the plaintiff's command on a voyage from Sunderland to the Brazils and other ports, and then on a homeward voyage to Liverpool, where she arrived on the 18th of June, 1869, and having there discharged her homeward cargo she sailed thence under the plaintiff's command with a cargo to the Tyne, and thence to Sunderland, at which port she arrived on the 9th of August, 1869.

4. The plaintiff then made several ineffectual applications to *J. D.*, with a view to obtaining another charter for the said vessel, and after she had been lying idle for a considerable time, the plaintiff, on or about the 16th of September, 1869, obtained an advantageous charter for her to proceed to Barcelona with a cargo of coals, and with a view to enabling her to execute such charter, the plaintiff paid the dock dues and moved the vessel into a slipway in order that her bottom might be cleaned, but on or about the 17th of September, whilst the vessel was on the shore adjoining the slipway, the defendant, to whom the said *J. D.* had in the meantime transferred his 32-64th parts, forcibly took the vessel out of the possession of the plaintiff, and refused and still refuses to allow the plaintiff to take the vessel on her said voyage to Barcelona, and by reason thereof heavy loss is being occasioned to the plaintiff.

The plaintiff claims:—

1. Judgment giving possession of the vessel *Lady of the Lake* to the plaintiff:
2. The condemnation of the defendant in costs of suit, and in

Possession.

all losses and damages occasioned by the defendant to the plaintiff:

3. Such further relief as the nature of the case requires.

(Title.)

*Defence.*

1. The defendant says that the acceptances in the second paragraph of the claim mentioned were respectively dishonoured by the plaintiff, and have never yet been paid by him.

2. It was agreed between the plaintiff and *J. D.*, that *J. D.* should act, and he has since always acted, as ship's husband of the *Lady of the Lake*.

3. On the 31st of August, 1869, *J. D.* sold to the defendant for the sum of £400, and by bill of sale duly executed transferred to him, his 32-64th shares, and the bill of sale was duly registered on the 14th of September following.

4. After the *Lady of the Lake* had arrived at Sunderland, and after the defendant had purchased from *J. D.* his 32-64th shares of the *Lady of the Lake*, the defendant placed the vessel in the custody and possession of a shipkeeper. The plaintiff, however, unlawfully removed her from such possession, and thereupon the defendant had the vessel taken into the South Dock of the harbour at Sunderland, with orders that she should be kept there. What the defendant did, as in this article mentioned, he did with the consent and full approval of *J. D.*

5. At the time of the sale of the *Lady of the Lake* by *J. D.* to the defendant as aforementioned, there was and there still is due from the plaintiff, as part owner of the *Lady of the Lake*, to *J. D.*, as part owner and ship's husband, a sum of money exceeding £300 in respect of the vessel and her voyages, over and above the amount of the unpaid acceptances.

6. Save as herein appears, the averments in the fourth paragraph of the claim contained are untrue, and if the charter-party mentioned in that paragraph was obtained by the plaintiff as alleged, which the defendant does not admit, it was obtained by him without the authority, counsel, or knowledge of *J. D.* or the defendant.

7. Before the defendant took possession of the vessel as aforementioned, the plaintiff ceased to be master of her with the consent of *J. D.* or the defendant.

8. *J. D.* has instituted an action against the said vessel in order to have the accounts taken between him and the plaintiff, and to enforce payment of the money due from the plaintiff to him.

(Title.)

*Reply.*

1. The plaintiff says in reply to the first paragraph of the defence that the bills therein mentioned were dishonoured by the plaintiff because *J. D.* was indebted to the plaintiff in a large amount for his wages as master, and for his share of the earnings of the *Lady of the Lake*, and refused payment thereof.

2. *J. D.* did not place the vessel in the exclusive custody or possession of a shipkeeper as in the fifth paragraph of the defence stated or implied. On the contrary, the vessel continued in the custody and possession of the plaintiff, who still holds her register. A man was sent on board the vessel by *J. D.* to look after *J. D.*'s share in the said vessel while she was in dock, but he did not dispossess the said plaintiff or take exclusive possession of the vessel, and the plaintiff was not dispossessed of the vessel until on or about the 17th of September last.

3. Except as hereinbefore appears, the plaintiff joins issue upon the defendant's statement of defence.

(Title.)

*Rejoinder.*

The defendant joins issue upon the first and second paragraphs of the reply.

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14.

(Title.)

*Statement of Claim.*

1. By an indenture dated the 10th day of June, 1877, made between one *A. B.*, then being the sole owner of the ship *W. O.*, of the one part, and the plaintiff of the other part, the said *A. B.*, in consideration of the sum of £1000 paid to him by the plaintiff, conveyed to the plaintiff 64-64th parts in the said ship *W. O.*, subject to a proviso for the redemption of the same on payment by the said *A. B.*, his executors, administrators, or assigns, to the plaintiff of the sum of £1000, with interest for the same in the meantime at the rate of 5 per cent. per annum, on the 25th day of September then next ensuing.

2. The whole of the said sum of £1000, with an arrear of interest thereon, remains due to the plaintiff on his said security.

The plaintiff claims:—

1. Judgment giving possession of the said ship *W. O.* to the plaintiff.
2. The condemnation of the defendant in the costs of the action.
3. Such further or other relief as the nature of the case may require.

(Title.)

*Statement of Defence.*

1. The defendant admits the allegation in the plaintiff's statement of claim.

2. The defendant says that the said *A. B.*, by deed dated the 1st day of January, 1877, made between the said *A. B.* of the one part and the defendant of the other part, in consideration of the sum of £1000 paid by him to the said *A. B.*, conveyed to the defendant 64-64th parts in the said ship *W. O.*, subject to a proviso for the redemption of the same on payment by the said *A. B.*, his executors,

administrators, and assigns, to the plaintiff of the sum of £1000, with interest for the same in the meantime at the rate of 5 per cent. per annum, on the 1st day of November then next ensuing.

3. The whole of the said sum of £1000 with arrears of interest was due and owing on the 20th day of November, when the defendant took possession of the said ship, and the value of the said ship is less than the said sum of £1000, together with the arrears of interest.

(Title.)

Reply.

The plaintiff joins issue on the defendant's statement of defence.

15.

No. 9 (J. A.)

(Title.)

Statement of Claim.

**Bottomry** 1. The *Onward*, a ship of 933 tons register, or thereabouts, belonging to the United States of America, whilst on a voyage from Moulmein to Queenstown or Falmouth for orders, and from thence to a port in the United Kingdom or on the Continent, between Bordeaux and Hamburg, both ports inclusive, laden with a cargo of teak timber, was compelled to put into Port Louis, in the island of Mauritius, in order to repair and refit.

2. The master of the *Onward* being without funds or credit at Port Louis, and being unable to pay the expense of the said repairs, and the necessary disbursements of the said ship at Port Louis, so as to enable the said ship to resume and prosecute her voyage, and after having communicated with his owners and with the owners and consignees of the cargo, was compelled to resort to a loan of 24,369 dollars on bottomry of the said ship, her cargo and freight, for the purpose of enabling him to pay the said expenses and disbursements, which sum Messrs. *H. and Company*, of Port Louis, at the request of the master by public advertisement, advanced to the said master at and after the rate of 128 dollars for every 100 dollars advanced, and accordingly the said master, by a bond of bottomry dated the 13th of October, 1870, by him duly executed in consideration of the sum of 24,369 dollars, Mauritius currency, paid to him by the said Messrs. *H. and Company*, bound himself and the said ship and her cargo, namely, about 940 tons of teak timber, and her freight, to pay unto Messrs. *H. and Company*, their assigns, or order or indorsees, the said sum of 24,369 dollars, with the aforesaid maritime premium thereon, within twenty days next after the arrival of the *Onward* at her port of discharge from the said intended voyage, the said payment to be made both in capital and interest in British sterling money, at and after the rate of 4s. for every dollar, with a condition that in case the said ship and cargo should be lost during her voyage from Port Louis to Queenstown or Falmouth for orders, and thence to her port of discharge in the United Kingdom

or on the Continent between Bordeaux and Hamburg, both ports inclusive, then that the said sum of 24,369 dollars, and maritime premium thereon, should not be recoverable. Bottomry.

3. The *Onward* subsequently proceeded on her voyage, and on the 7th of February, 1871, arrived with her cargo on board at the port of Liverpool, which was her port of discharge.

4. The bond was duly indorsed and assigned to the plaintiffs.

5. The ship has been sold by order of the Court, and the proceeds of the sale thereof have been brought into Court, and the freight has also been paid into Court.

6. The said sum of 24,369 dollars, with the maritime premium thereon, still remain due to the plaintiffs. By a decree made on the 10th of May, 1871, the Court pronounced for the validity of the bond, so far as regarded the ship and freight, and condemned the proceeds of the ship and freight in the amount due on the bond. The principal and premium still remain owing to the plaintiffs, and the proceeds of the said ship and her freight available for payment thereof are insufficient for such payment.

The plaintiffs claim :—

1. That the Court pronounce for the validity of the bond so far as regards the cargo :
2. That the Court condemn the defendants and their bail in so much of the amount due to the plaintiffs on the bond for principal, maritime premium, and for interest from the time when such principal and premium ought to have been paid, as the proceeds of the ship and freight available for payment of the bond shall be insufficient to satisfy, and in costs :
3. Such further relief as the nature of the case requires.

(Title.)

*Statement of Defence.*

The defendants say that the—

1. Several averments in the second article of the statement contained are respectively untrue, except the averment that the bottomry bond therein mentioned was given and executed.

2. The *Onward* proceeded on the voyage in the first paragraph of the claim mentioned, under a charter-party made between the defendants and the owners of the vessel, who resided at New York. And the cargo in the said paragraph mentioned belonged to the defendants, and was shipped at Moulmein by Messieurs. *T., F. and Company*, of Moulmein, consigned to the defendants.

3. When the *Onward* put into Port Louis, the master placed his ship in the hands of Messrs. *H. and Company*, the persons in the second paragraph of the claim mentioned, and the repairs and disbursements in the said second article mentioned were made, directed, and expended under the orders, management, and on the credit of the said Messrs. *H. and Company*, who at the outset contemplated the necessity of securing themselves by the hypothecation of the ship, freight, and cargo.

4. The master of the *Onward*, and Messrs. *H. and Company*, did not communicate to the said shippers of the cargo, or to the defend-

**Bottomry.** ants who carried on business at Glasgow, as the master knew the intention of hypothecating the ship, freight, and cargo, or the circumstances which might render such hypothecation advisable or necessary, but on the contrary, without reasonable cause or excuse, abstained from so doing, although the comparatively small value of the ship and freight to be earned rendered it all the more important that such communication should have been made.

5. A reasonable and proper time was not allowed to elapse between the advertisements for the bottomry loan and the acceptance of Messrs. *H. and Company's* offer to make such loan.

(Title.)

Reply.

1. The plaintiffs say that the defendants, since the 31st day of December, 1868, have been the only persons forming the firm of *T., F. and Company*, of Moulmein, mentioned in the third paragraph of the defence.

2. After the master of the *Onward* put into Port Louis as aforesaid, he employed Messrs. *H. and Company*, in the claim mentioned as his agents, and by his directions they by letter communicated the defendants' firms at Moulmein and Glasgow the circumstances of the ship's distress and the estimated amount of her repairs.

3. The said Messrs. *H. and Company* shortly after the said ship was put into their hands at Port Louis, offered the said master, in case he should require them to do so, to make the necessary advances for the ship's repairs, and to take his draft at ninety days' sight on Messrs. *B. Brothers*, of London, at the rate of five per cent. discount for the amount of the advances, together with a bottomry bond on ship, cargo, and freight as collateral security, the bond to be void should the draft be accepted. The said master and the said Messrs. *H. and Company*, by letter, communicated to the owners of the *Onward* the circumstances of the said ship's distress, and the aforesaid offer of the said Messrs. *H. and Company*, and the said master by his letter requested the said owners to give him their directions on the subject. The said owners, shortly after receiving such letters, by letter communicated with the defendants at Glasgow, and forwarded to them copies of the said lastly-mentioned letters of the said master and of the said Messrs. *H. and Company*.

4. The defendants' houses at Moulmein and Glasgow respectively received the letters referred to in the second paragraph of this reply in time to have communicated with the said master at Port Louis before the giving of the said bottomry bond.

5. The defendants received the said copies of letters referred to in paragraph four of this reply in time for them to have communicated thereon with the said master at Port Louis before the giving of the said bond.

6. The defendants did not at any time answer the said communications of the said Messrs. *H. and Company*, or in any way communicate or attempt to communicate with the said master, or to direct him not to give or to prevent him from giving the said bottomry bond on the said cargo.

7. The said bond was duly advertised for sale, and was subse-

quently, and after a proper interval had elapsed, sold by auction in the usual way. There were several bidders at the sale, and the said Messrs. *H. and Company* were the lowest bidders in premium, and the said bond was knocked down to them. The said bond was not advertised for sale until the said ship was ready for sea, and up to that time the master of the said ship had expected to hear from her owners, and had hoped to be put in funds, and had not finally determined to resort to bottomry of the said ship, or her cargo or freight.

Limitation of Liability.

8. Save as herein appears the plaintiffs deny the truth of the several allegations contained in the said answer.

[NOTE.—*The facts stated in this reply should, in general, be introduced by amendment into the statement of claim.*]

(Title.)

*Rejoinder.*

The defendants join issue upon the plaintiffs' reply.

16.

In the High Court of Justice,  
Probate, Divorce, and Admiralty Division,  
Admiralty  
Fos. .

188 . No . Limitation of Liability.

Writ issued .

Between the owners of the ship or vessel *Tabor* . Plaintiffs.

v.

The owners of the late barque or vessel *Genevieve*, the owners of her cargo, and the master and crew lately serving on board the said vessel . . . Defendants.

*Statement of Claim.*

1. Before and at the time of the collision hereinafter stated, the plaintiffs were the owners of the American ship *Tabor*, belonging to the port of Bath, State of Maine, and the defendants were at such time the owners, master, and crew of a French barque called the *Genevieve*, and of her cargo.

2. Shortly before midnight on the 7th of April, 1879, the said ship *Tabor*, while on a voyage from Philadelphia to Portland Oregon, laden with a cargo of railway materials, came into collision with the *Genevieve* while in the South Atlantic Ocean.

3. The *Genevieve*, with her cargo and certain personal effects of her master and crew, sank shortly after the said collision. There was no loss of life or personal injury caused by reason of the said collision.

4. The gross tonnage of the *Tabor*, after due allowance in respect of space occupied and appropriated to the use of her crew, was and is 1280 <sup>ft</sup> tons.

5. The collision occurred without the actual fault or privity of the plaintiffs.

6. On the 15th April, 1880, the defendants, as owners of the said



Limitation of liability.

barque *Genevieve*, and the master and crew suing for the loss of their personal effects, brought an action in this division of the High Court of Justice against the *Tabor* and her freight, claiming damages in respect of the said collision. The *Tabor* was arrested, but was released on bail being given. The action came on for trial on the 27th November, 1880, and the *Tabor* was adjudged alone to blame for the collision. An action was also brought by the owners of the cargo on board the *Genevieve*, but was by arrangement stayed pending the aforesaid action.

7. The plaintiffs admit that the said collision was caused by the improper navigation of the *Tabor*.

8. The claims in respect of the loss of the *Genevieve*, and of goods, merchandise, and other things on board her at the time of the happening of the said collision, will exceed the aggregate amount of £8 per ton on the registered tonnage of the *Tabor*.

9. The sum of £8 per ton on the registered tonnage of the *Tabor*, after deducting crew space as aforesaid, is £10,246. The plaintiffs submit to pay into Court or give bail for this sum, with interest thereon at the rate of £4 per cent. per annum, from the date of collision until payment.

The plaintiffs claim—

1. That it may be declared that they and the ship *Tabor* are not answerable in damages in account of the said collision in respect of loss or damage to ship's boats, goods, and merchandise, or other things, to an aggregate amount exceeding £8 for each ton of the registered tonnage of the *Tabor*, calculated as aforesaid.
2. That it may be declared that this amount is the sum of £10,246.
3. That upon payment being made or bail given for the said sum of £10,246, with interest thereon at the rate of £4 per cent. per annum from the date of the collision, the defendants, the owners of the cargo, may be restrained by injunction from prosecuting any action for damages arising out of the said collision against the plaintiffs or the *Tabor*, and that all further proceedings in the said actions may be stayed.
4. That proper directions may be given by the Court for ascertaining the persons who have any claim in respect of loss or damage to ship's boats, goods, and merchandise, or other things occasioned by the said collision, and that proper directions may be given for the exclusion of any claimants who shall not come in within a time to be fixed for the purpose.
5. That the plaintiffs may have such further and other relief as the nature of the case may require.

Delivered the day of \_\_\_\_\_, 188 , by P. and Co., of solicitors for the plaintiffs.

(Title.)

*Statement of Defence of the owners of the Genevieve.*

The defendants do not admit the truth of the allegations contained

in paragraphs 4, 5, and 9 of the statement of claim, except so far as relates to the submission of the plaintiffs in the said paragraph 9. Limitation of liability.  
 Delivered the day of \_\_\_\_\_, 188 , by *S. and Co.*, of  
 solicitors for the defendants.

(Title.)

*Statement of Defence on behalf of the owners of the cargo of the Genevieve.*

1. The defendants do not admit the truth of the allegations contained in paragraphs 4 and 5 of the statement of claim.

2. The defendants do not admit that the sum of £10,246 represents the aggregate amount of £8 for each ton of the registered tonnage of the *Tabor*.

3. The defendants submit that if the plaintiffs establish their right to the relief prayed, they ought not to have such relief save upon the terms of paying to the defendants their costs incurred in the action mentioned in paragraph 6 of the statement of claim, and numbered 1880. O. No. 133.

Delivered this day of \_\_\_\_\_, 188 , by *T. and Co.*, of  
 solicitors for the defendants.

(Title.)

*Reply.*

The plaintiffs join issue upon the statement of defence of the owners of the *Genevieve* and the owners of the cargo of the *Genevieve* respectively.

Delivered this day of \_\_\_\_\_, 188 , by *P. and Co.*, of  
 solicitors for the plaintiffs.

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17.

PARAGRAPH IN STATEMENT OF DEFENCE IN ACTION OF DAMAGE CLAIMING LIMITATION OF LIABILITY UNDER s. 54, M. S. A., 1862.

The defendants further say that the matters complained of [*if any such occurred, and if the defendants are liable for them, which they deny on the grounds hereinbefore stated*] constituted a loss or damage by reason of the improper navigation of the said ship *T.*, and the defendants say that the same occurred without the actual fault or privity of the defendants, and that the gross tonnage of the said ship amounted to \_\_\_\_\_ tons and no more, and the defendants claim that they are not liable in any event in respect of the premises to an aggregate amount exceeding £8 per ton of the said tons. [*The portion in brackets must be omitted if the improper navigation is admitted.*]

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18.

CLAIM OF LIMITATION OF LIABILITY UNDER M. S. A., 1862, BY COUNTERCLAIM.

(Title.)

*Statement of Defence and Counterclaim.*

1. The defendants in the said original action admit the statements

Limitation of liability.

contained in the statement of claim, and that the said collision was occasioned by improper navigation of the said steamship or vessel *C.*, and by way of counterclaim the said defendants say as follows:—

2. The said defendants were before and at the time of the said collision the owners of the said steamship *C.*, which is a duly registered British steamship.

3. On the 27th June, 1876, another action, numbered \_\_\_\_\_, was commenced against the said steamship *C.* by the said owners of cargo laden on board the said barque, and in the statement of claim mentioned, to recover damages for the loss of the said cargo in the said collision, and such action has by order of the Court been consolidated herewith.

4. No other action save as aforesaid has yet been brought against the said defendants or the said steamship *C.* or her freight in respect of the said collision, but the defendants apprehend other claims in respect of a damage to goods, merchandise, and other things on board the said barque *T.*, and also in respect of loss of life and personal injury caused to persons on board of and carried in the said barque *T.*, at the time of the said collision.

5. The said collision took place without the actual fault or privity of the said defendants, or either or any of them, and the said defendants submit that they are entitled to the benefit of the provisions of the Merchant Shipping Act, 1854, and the Merchant Shipping Acts Amendment Act, 1862, for limiting their liability in respect of the said collision.

6. The gross tonnage of the said steamship *C.*, without deduction on account of the engine room, is \_\_\_\_\_ tons.

7. The said defendants are willing, and they hereby offer, to pay in such manner as the Court shall direct the amount to which they are liable in respect of the said collision, regard being had to the provisions of the Merchant Shipping Act, 1854, and the Merchant Shipping Acts Amendment Act, 1862.

The said defendants claim:—

1. A declaration that the defendants are not answerable in respect of loss of life or personal injury caused by the said collision, together with loss or damage to ship's boats, goods, merchandise, or other things to an aggregate amount exceeding £15 for each ton of the gross tonnage of the said steamship *C.*, without deduction on account of the engine room, nor in respect of loss or damage to ship's goods, merchandise, or other things on board the said barque *T.*, caused by the said collision, to an aggregate amount exceeding £8 for each ton of the gross tonnage of the said steamship *C.*, without deduction on account of the engine room.
2. That the said defendants may be at liberty to give bail for such an aggregate amount and for such interest as the Court may think fit to award.
3. That upon the filing of the bail bond all further proceedings in the said actions, numbered \_\_\_\_\_ and \_\_\_\_\_ respectively, may be stayed, and the respective plaintiffs in the said actions, and all and every other person and persons claiming in respect of damage or loss to the said barque *T.*, or to her boats, or to any goods, merchandise or other

things on board her, or in respect of loss of life or personal injury occasioned by the said collision, may be restrained from bringing any other action or actions in respect of these said losses or injuries. Limitation of liability.

4. That all proper directions may be given by the Court for ascertaining the persons who have any just claim in respect of loss or damage to ship's goods, merchandise, and other things caused by the said collision, and in respect of loss of life and personal injury caused by the said collision, and for the exclusion of any claimants who shall not come in within a certain time to be fixed for that purpose.
5. That the amount of the said defendants' liability may be rateably distributed among the several persons who may establish a claim thereto.
6. Such further and other relief as the nature of the case may require.

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19.

PARAGRAPH IN STATEMENT OF DEFENCE IN ACTION OF DAMAGE ALLEGING THAT VESSEL BY WHICH DAMAGE WAS DONE WAS IN CHARGE OF A DULY LICENSED PILOT.

The defendants (further) say that at the time of the alleged collision between the said ships *A.* and *B.*, the *A.* was (as hereinbefore mentioned) by compulsion of law in charge of a pilot duly licensed for the district in which the said ship was at the time of the said collision in the act of being navigated, and that the damage proceeded for [*if caused by the negligent navigation of the ship A., which the defendants deny on the grounds hereinbefore stated*] was caused solely by the negligence of the said pilot who was in sole charge of the said ship, and not by any default, negligence, or want of proper care on the part of the *A.*, her owners, master or crew, and that the defendants are not liable for the said alleged damage. [*If the negligence of the pilot is alone relied upon, the portion in brackets must be omitted.*]

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20.

PARAGRAPH IN STATEMENT OF DEFENCE IN ACTION OF SALVAGE ALLEGING AN INEQUITABLE AGREEMENT.

*(Title.)*

[*State the material facts and conclude as follows:—*]

7. The said sum of £        was not a reasonable amount for the services to be rendered by the *T.*, but was an exorbitantly excessive amount for such services, and the master of the *T.* in procuring the master of the *M.* (the salvaged ship) to sign the said agreement, took undue advantage of the position in which the master of the *M.* was placed; and the defendants further say that the master of the *M.* had not any authority to enter into the said agreement on behalf of the defendants, and that the said agreement was extorted and improperly

obtained from the master of the *M.*, and is wholly unjust and inequitable, and is not binding on the defendants.

8. The defendants are ready and willing to pay to the plaintiffs such reasonable amount for their services as the Court may think just.

[*A reasonable sum should be tendered by the defendants to the plaintiffs in such a case.*]

## 21.

## PETITION ON PROTEST.

(*Title as in ordinary Actions.*)

Petition  
on protest.

A. and B., the solicitors for the defendants, say as follows:—

1. The plaintiff and the defendants are subjects of his Majesty the King of Greece, and are resident within the Kingdom of Greece

2. The defendants are the owners of the ship or vessel *Evangelistria*, which is a Greek vessel belonging to the port of Syra, in Greece.

3. On or about the 4th of October, 1874, at Syra aforesaid, by a certain agreement or instrument of mortgage which was made at Syra aforesaid, the said vessel was mortgaged by the defendants to the plaintiff to secure repayment to the plaintiff of the sum of 54,450 drachmas, together with interest at the rate specified in the said agreement.

4. The said sum, as will appear in reference to the said agreement, was advanced, as to one third thereof, for a period of two years from the date of the said agreement, and it was a further condition of the said agreement that even in case of default in payment of either interest or principal, the said ship should be brought by the plaintiff to Syra, to be there sold or otherwise dealt with. No default has been made in payment of interest pursuant to the said agreement, and no part of the said principal sum is due and payable.

5. The *Evangelistria* lately arrived at the port of Swansea, laden with a cargo of grain from Lagos, and is now lying at the said port of Swansea.

6. On or about the 10th day of May, 1876, the *Evangelistria* was arrested in a suit for necessities, instituted in this Honourable Court by one John Petters.

7. The said necessities, in respect of which the said suit was instituted, were supplied to the *Evangelistria* at Syra aforesaid whilst the said ship was building there. On her completion she was registered as a Greek ship, and has since continued so registered. The present plaintiff appeared under protest in the said suit, and has since filed a petition on protest, praying the Court to pronounce against its jurisdiction, on the ground that the claim of the plaintiff in that suit is not a claim for necessities within the meaning of 3 & 4 Vict. c. 65, s. 6, or 24 Vict. c. 10, s. 6.

8. The present suit was commenced by writ dated the 17th of May, 1876, after the said ship had been arrested in the said suit for necessities.

The endorsement on the said writ is in the words and figures following:—

“The plaintiff claims to be the sole owner or mortgagee of the ship *Evangelistria*, of the port of Syra, in Greece, and to be entitled to

have possession of the said ship decreed to him, or to have the said ship sold for the repayment of various sums of money now due and owing to the plaintiff, and the plaintiff claims £3500." Petition on protest.

9. This Honourable Court has no jurisdiction to entertain the said cause of necessities, and by reason thereof the said arrest of the *Evangelistria* is, under the circumstances stated in this petition, irregular and void, and the defendants submit that the said proceedings in the said cause of necessities being null and void, and by reason of the circumstances aforesaid, this Honourable Court has no jurisdiction to entertain this suit.

The defendants therefore pray this Honourable Court :—

1. To pronounce against the jurisdiction of this Honourable Court, and to dismiss this suit with damages and costs.
2. To grant such further or other relief as the nature of the case may require.

*Answer to the Petition on Protest.*

C. and D., the solicitors for the plaintiff, say as follows :—

1. The plaintiff admits the truth of the first paragraph of the said petition.

2. The plaintiff denies the truth of the second paragraph of the said petition.

3. By an agreement or deed of sale, dated the 21st day of September, 1874, and duly made at Syra, in the Kingdom of Greece, before a notary public, with all the formalities required by the law of Greece, and numbered 15,742, the defendants being owners of the *Evangelistria*, sold to the plaintiff the *Evangelistria* and delivered to him the possession thereof for the price of 54,450 drachmas of Government tariff (Greek) paid to them by the plaintiff.

4. The said agreement was valid and effectual according to the law of Greece to pass the property, ownership, and right of possession of the said ship to the plaintiff, in whom such property and ownership and right of possession have been ever since and are now vested.

5. Such sale to the plaintiff was duly registered on the 23rd day of September, 1874, at the port of Syra aforesaid, by the proper authorities, and the plaintiff thereupon became, and has ever since been, and still is the sole registered owner of the said ship.

6. On the 4th day of October, 1874, an agreement (being the agreement mentioned in the fourth paragraph of the said petition) was entered into between the plaintiff and the defendants. Such agreement was and is in the Greek language, and the following is a correct translation thereof [*agreement set out.*]

7. In pursuance of the said agreement the *Evangelistria* proceeded upon several voyages in the charge of and under the command of the defendants, or of one or other of them.

8. Before the *Evangelistria* could leave the Kingdom of Greece to proceed on such voyages, the plaintiff was compelled by the law of Greece to give, and he did before she left the Kingdom of Greece give, with the knowledge of the defendants, a bond to the proper authorities in two-thirds of the value of the *Evangelistria*, conditioned for the return of the *Evangelistria* to the Kingdom of Greece within the period of two years from the date of her so leaving Greece. The

Petition on protest. said period of two years will expire in the month of September now next ensuing.

9. The plaintiff denies the allegations contained in the fourth paragraph of the said petition, and says that the said sums of 54,450 drachmas and 5381 10 per cent. drachmas are still owing to the plaintiff, and that the defendants have made default in the payment of interest due under the terms of the said agreement of the 4th day of October, 1874, and that large sums of money are now due and owing to the plaintiff from the defendants in respect of such interest.

10. On or about the 15th day of October, 1875, the plaintiff instituted a suit in the commercial division of the Court of First Instance at Syra aforesaid, being a Court of competent jurisdiction in that behalf, against the defendants, and prayed the said Court by reason of such default as aforesaid, and upon other grounds, to order that the defendants, or such one of them as was acting as master of the *Evangelistria*, should be substituted by a man of his (the plaintiff's) confidence, and that the said ship should be brought to Syra, and that a provisory execution of the decision should be ordered, as well as the personal arrest of the defendants, and that the defendants should pay the costs.

11. The defendants were duly summoned to appear in the said suit, in accordance with the law of Greece, but failed to appear therein.

12. On the 22nd day of April, 1876, the said suit was heard before the said Court, and the said Court delivered judgment therein, and ordered expulsion of the defendants from the said ship, and that they should be substituted by a captain enjoying the plaintiff's confidence, and ordered the personal arrest of the defendants, and condemned them in costs, and requested the proper officers to execute or assist in executing the said judgment.

13. By order of such judgment the Greek consular authorities in this country, being the proper authorities in that behalf, dismissed the defendants from the said ship on her arrival at Falmouth on or about the 28th day of April, 1876, and put on board her a person appointed by the plaintiff and enjoying his confidence, and put her into the possession of such person on behalf of the plaintiff, and such person took the said ship from Falmouth to Swansea to discharge her cargo.

14. On the arrival of the said ship at Swansea the defendants, against the will of the plaintiff and of the said consulate authorities, forcibly ejected the said master so appointed by the plaintiff from the said ship, and forcibly took possession of her, and they remain in possession of her against the will of the plaintiff and of the said consulate authorities.

15. By the law of Greece all persons in charge of any Greek vessel entering a foreign port are required to deposit all the ship's papers with the Greek consular officer at such port. On the arrival of the said ship at Swansea, the vice-consul of Greece at that port, being such consular officer as aforesaid, applied to the defendants and required them to deposit such papers with him. Such papers include the libretto or certificate of registry, showing the ownership of the said ship. The defendants have refused and still refuse so to deposit such papers, and the plaintiff is unable to obtain possession of the

said papers, including the said libretto, although such libretto shows the plaintiff to be sole owner of the said ship.

16. The plaintiff admits the truth of the allegations contained in the sixth and seventh paragraphs of the said petition.

17. The defendants have threatened and intend, unless prevented by this Court, to take the *Evangelistria* to South America, or to some other foreign port or place, not being a Greek port or place, and to deprive the plaintiff of the power of taking the *Evangelistria* to Greece within the time allowed by the said bond, and of the power of selling the *Evangelistria* at Syra under the said agreement of the 4th day of October, 1874, and they refuse to give up possession of the said ship to the plaintiff, and the plaintiff cannot obtain possession of the said ship or of her papers without the assistance of this Honourable Court.

The plaintiff prays this Honourable Court to pronounce for the jurisdiction of this Court, and to overrule the petition on protest, and to condemn the defendants in costs, and to give such further relief as may be required.

*Reply.*

We, *A.* and *B.*, solicitors for the defendants, say that we deny the statements in the plaintiff's answer, except so far as consistent with the statements in defendants' petition, and we join issue thereon.

*Conclusion.*

*C.* and *D.*, solicitors for the plaintiff, say they do not plead further, and pray that the pleading may be concluded.

Dated the 2nd August, 1876.

22.

PETITION IN OBJECTION TO THE REGISTRAR'S REPORT.

*(Title.)*

*P.* and *S.*, solicitors for the defendant in a cause of necessities, instituted by transfer from the County Court of Northumberland, holden at Newcastle-upon-Tyne, on behalf of John Freeland Fergus Common, of South Shields, in the county of Durham, shipbuilder, against the vessel *Turliani*, and against Basilio Papayanni, of Liverpool, shipowner, the attorney lawfully appointed of Demetrio Vafiadachi, of Syra, the mortgagee of the *Turliani*, intervening for petition in objection to the registrar's report, say as follows:—

1. On the 10th day of December, 1874, the right honourable the judge referred the plaintiff's claim in this cause, among others, to the registrar to examine and report thereon as usual. The reference was heard by the registrar on the 29th day of December, 1874, and the 4th day of January, 1875, and on the 6th day of the said month of January, the registrar made his report as to all the matters referred to him. The defendant's solicitors crave leave to refer to an office copy of the said report which is filed in this cause, and to the regis-



**Petition  
in objection to  
Report.**

trar's notes of the evidence given on the said reference, and to the reasons for the said report.

2. The *Turliani* was a Greek brig of about 274 tons register. She was built at Syra in the latter part of the year 1872, and was fastened with iron bolts. She was owned in moieties by John Zancopulo, master mariner, and Zanni L. Companis, mariner. Zancopulo was master of the *Turliani* until the month of February, 1874, and Companis was a seaman on board her.

3. In or about the month of February, 1874, the *Turliani*, in consequence of damage received at sea, put into Cuxhaven, where she was caulked and some repairs were done to her. The said John Zancopulo, finding it expedient to remain for a time at Cuxhaven, instructed the said Companis to take the *Turliani* to Swansea, where the said Zancopulo had arranged a charter for her, and where he intended to rejoin her.

4. The *Turliani* accordingly proceeded to sea in charge of a pilot, but instead of going to Swansea, the said Companis proceeded with the *Turliani* to North Shields, where she arrived on or about the 4th of March, 1874. The *Turliani* was then in good repair and seagoing condition, and not in want of any repairs, except some caulking and slight repairs to her upper works.

5. The said Companis, without the knowledge or sanction of the said Zancopulo, and before the arrival of Zancopulo at North Shields, employed the plaintiff to do the caulking and repairs mentioned in the preceding article, and to sheath the *Turliani* with yellow metal, and the sum allowed by the registrar to the plaintiff in this cause is the amount of his account for the said repairs and metalling.

6. It was most imprudent and improper to metal the *Turliani*, she being an iron-fastened vessel. It was impossible to place the metal in contact with the iron, in consequence of the galvanic action which would thereby be produced upon the metal, and it was consequently necessary to take unusual precautions to prevent the contact of the metal with the iron bolts, and the expense of metalling the *Turliani* was thereby largely increased.

7. At the time of so metalling the ship the plaintiff well knew that the *Turliani* was an iron-fastened vessel, and was aware of the consequent impropriety and imprudence of metalling her.

8. On the 6th day of January, 1875, the plaintiff, John Freeland Fergus Common, attended before the registrar in the registry of this honourable Court to explain a mistake in the plaintiff's account in another cause against the *Turliani*, and the said John Freeland Fergus Common thereupon, in the presence of the solicitors for the plaintiff and defendant, stated to the registrar that he knew that the *Turliani* was an iron-fastened ship, and that he was aware of the imprudence of metalling the vessel, but that in consequence of the said Companis directing the vessel to be metalling, he took care before placing the metal on the vessel to cover the heads of the iron bolts with white lead, and then to place pieces of sheet lead over each bolt and nail it on with copper or yellow metal nails.

9. By reason of the premises the defendant's solicitors submit:—

a. That it was not necessary or proper to metal the *Turliani*.

b. That under the circumstances hereinbefore pleaded the plaintiff's claim, in so far as the metalling is concerned, is not a

claim for necessities within the true intent and meaning of the 3 & 4 Vict. c. 65, s. 6.

- c. That the claim of the plaintiff for metalling the *Turliani* ought to be postponed to the claim of the defendant as mortgagees.

Petition  
in objection  
to  
Report.

Wherefore the said defendant prays the right honourable the judge to refer the said report back to the registrar, with directions to amend the same, in so far as it reports in favour of the priority of the plaintiff's claim for metalling the *Turliani* over the defendant's, and to condemn the plaintiff in so much of the costs of the said reference as relate to the said claim, and in the costs of this objection, and that otherwise justice may be administered to the defendant in the premises.

*Answer.*

I. and G., solicitors for John Freeland Fergus Common, of South Shields, in the county of Durham, shipbuilder, the plaintiff in this cause, in answer to the petition of Basilio Papayanni, of Liverpool, shipowner, in objection to the registrar's report, say as follows :—

1. They admit the truth of the allegations contained in paragraph 1 of the said petition, and crave leave to refer to the said report and registrar's notes and reasons.

2. They admit the truth of the allegations contained in the second paragraph of the said petition, but further say that, upon the said John Zancopulo and Zanni L. Companis becoming co-owners of the *Turliani*, it was agreed between them that when the said John Zancopulo should be on shore, the said Zanni L. Companis should be her master and have the control of her and of her affairs.

3. As to the third and fourth paragraphs of the said petition—The *Turliani*, after leaving Cuxhaven, met with contrary winds, in consequence of which the said Companis, who was then her master and had the management of her affairs, took her into North Shields, where she arrived as in the said petition stated. The said Companis was then still owner of a moiety of the *Turliani*. On her so arriving at Shields she was in want of caulking and repairs to her upper works, and she was not metalled. The plaintiff was not aware of any such directions having been given by Zancopulo to Companis, as stated in the said petition, until the hearing of the reference in this cause by the registrar.

4. As to the fifth paragraph of the said petition—After such arrival at Shields, the said Companis being such master and part owner of the *Turliani*, and having the management of her affairs, chartered her to proceed on a voyage to Buenos Ayres, and he employed the plaintiff to do the necessary caulking and repairs to the *Turliani*, and to sheath her with yellow metal, and the plaintiff accordingly, by the direction of the said Companis and of the surveyors employed by or on behalf of her owners or underwriters, did such caulking and repairs, and sheathed her with yellow metal, and the sum allowed by the registrar is the amount of the plaintiff's account for such caulking, repairs and metalling.

5. As to the sixth and seventh paragraphs of the said petition—In

order that the *Turliani* might perform either the voyage contemplated by Zancopulo, which was a voyage to Sierra Leone and other places on the voyage to Buenos Ayres, it was necessary to metal her, notwithstanding that she was iron-fastened. It was not imprudent or improper to metal her, provided proper precautions were taken to prevent galvanic action, and proper precautions were taken by the plaintiff, who knew the said vessel was iron-fastened, to prevent such galvanic action. The precautions taken were such as are usual in metalling iron-fastened vessels. The expense of metalling was thereby necessarily larger than it would have been if the *Turliani* had been a copper-fastened vessel. Save as herein appears the plaintiff denies the truth of the allegations in the said sixth and seventh paragraphs.

6. As to the eighth paragraph of the said petition—The plaintiff stated that after the *Turliani* came into dock he found that she was an iron-fastened ship, and in the sense that it would have been better to have replaced the iron fastenings with copper, if possible, before metalling the vessel, he stated that he was aware of the imprudence of metalling her, meaning that it would be imprudent unless proper measures were taken with regard to the bolts, and he stated that in consequence of Companis and the surveyors of the vessel directing her to be metalling, iron-fastened as she was, and ordering that before placing the metal on the vessel he should take the usual precautions, namely, those of covering the heads of the iron bolts with white lead and then placing pieces of sheet lead over each bolt, and nailing such pieces on with copper or yellow metal nails, he followed such orders and took such precautions. Save as herein appears the plaintiff denies the truth of the said eighth paragraph.

7. The plaintiff submits that his said claim was properly allowed by the registrar, and that it is entitled to priority over the claim of the defendants as mortgagees.

And the said *J.* and *G.* pray the right honourable the judge to confirm the report of the registrar, and to reject the prayer of the said petition, and to condemn the said Basilio Papayanni in the costs of these proceedings in objection to the said report, and that further and otherwise right and justice may be administered in the premises.

#### *Reply and Conclusion.*

*P.* and *S.*, solicitors for the defendant in a cause of necessities instituted by transfer from the County Court of Northumberland, holden at Newcastle-upon-Tyne, on behalf of John Freeland Fergus Common, of South Shields, in the county of Durham, ship-builder, against the vessel *Turliani*, and against Basilio Papayanni, of Liverpool, shipowner, the attorney lawfully appointed of Demetrio Vafiadachi, of Syra, the mortgagee of the *Turliani*, intervening in reply to the answer of the plaintiff, deny the statements made therein, save in so far as the same admit the truth of the statements made in the petition of the defendant, and pray that the pleadings be concluded.

[Registrar's Report and Schedule of Claim, and the reasons for the decision must be appended.]

# APPENDIX VI.

## PART II.

### PRECEDENTS OF BILLS OF COSTS (a).

#### FORM A.

##### *The Humboldt.*

(Plaintiffs' costs in an action for salvage up to tender, for which the Court pronounced. For defendants' costs after tender, see Form B.)

##### *Easter Sittings.*

1876.	Lower Scale.
	£   s   d.
April 20th. Instructions to sue ... ..	0   6   8
Writ of summons <i>in rem</i> ; copy to file and attending to issue ... ..	0   6   8
Special indorsement ... ..	0   2   6
Copy writ for service, fos. 4, beyond 2 ... ..	0   1   4
Attending Messrs. A. & B., procuring their undertaking to appear, &c.... ..	0   6   8
21st. Notice to Messrs. A. & B. to compel their undertaking to give bail, &c. (in <i>caveat</i> warrant), that they had not undertaken to prove values, and unless they prove values at once I must arrest if they do not keep the property within the jurisdiction so that the values may be tested ; copy and service... ..	0   4   0
22nd. Perusing and considering notice of appearance	0   3   4
Perusing and considering notice of bail ... ..	0   3   4

(a) The following Forms—the proofs of which were kindly corrected by the Registrar of the Admiralty Division—are taken from bills actually taxed. The items and amounts in these precedents are those allowed on taxation ; but some items are allowed or disallowed according to the circumstances of the case, so that no precedent can be an infallible guide.

	Lower Scale
	£ s. d.
Attending looking up bail bond as perfected, and making inquiries as to sureties ... ..	0 6 8
Notice to the defendants' solicitors not to let the vessel go away on her intended voyage to the Brazils without examining their witnesses, otherwise I must press for trial without them; copy and service ... ..	0 4 0
Drawing retainer and attending retaining Mr. A. ...	0 3 4
Paid his fee and clerk ... ..	1 3 6
Instructions for statement of claim ... ..	0 13 4
Drawing same, fos. 26 ... ..	1 6 0
Attending Mr. B., feeing him to settle same ...	0 6 8
Paid his fee and clerk ... ..	2 4 6
26th. Copy statement of claim for the printer ...	0 8 8
Correcting the press ... ..	0 4 4
Paid printer's bill ... ..	1 8 0
Copy statement to deliver ... ..	0 4 4
Service thereof ... ..	0 3 4
May 11th. Summons for order on defendants to prove values ... ..	0 3 0
Copy for the judge ... ..	0 2 0
Paid fee thereon ... ..	0 2 0
Copy for service ... ..	0 1 0
Service thereof ... ..	0 2 6
Perusing summons for order for time to deliver defence ... ..	0 1 8
12th. Attending same; order made for a week ...	0 6 8
Attending summons for order to prove values; order made ... ..	0 6 8
Paid for same ... ..	0 3 0
Copy for service ... ..	0 1 0
Service thereof ... ..	0 2 6
19th. Perusing statement of defence ... ..	0 6 8
Demand for ten copies ... ..	0 1 6
Service thereof ... ..	0 2 6
Paid for ten copies ... ..	0 3 3
Perusing notice of tender ... ..	0 3 4
Copy for you ... ..	0 1 8
*Perusing and considering the outport charges, fos. 8 ... ..	0 2 8
Copy thereof for registrar to tax ... ..	0 2 8
The like for the adverse solicitors ... ..	0 2 8
Drawing bill of costs for taxation, and copy to tax, fos. 14 ... ..	0 14 0
Service of bill of costs on adverse solicitors ...	0 2 6
Attending lodging bills and obtaining appointment to tax ... ..	0 3 4
Attending taxation ... ..	0 6 8

\* The outport charges must be delivered in for taxation in the bill of costs. The *City of Brussels*, 4 L. R. Ad. 194.

	Lower Scale.		
	£	s.	d.
Attending agreeing costs as taxed ... ..		0	3 4
Perusing summons and attending adverse solicitors, consenting to their taking money out of Court ...	0	6	8
Attending receiving amount of salvage and costs, giving receipt and stamp ... ..	0	6	9
Sittings fee ... ..	0	15	0
Letters ... ..	0	6	0
Postages, &c. ... ..	0	3	6
Taxing fee ... ..			
*Outport charges ... ..	20	0	0

FORM B.

*The Humboldt.*

(Defendants' costs in an action for salvage after tender, for which the Court pronounced. For plaintiffs' costs up to tender, see Form A.)

	Lower Scale.		
	£	s.	d.
1876.			
July 3rd. Attending Mr. W. and taking instructions for affidavit to prove the absence of the vessel and witnesses ... ..	0	6	8
Drawing affidavit ... ..	0	4	0
Engrossing same ... ..	0	1	4
Writing adverse solicitor thereon ... ..	0	3	6
Nov. 2nd. Term fee ... ..	0	15	0
Writing adverse solicitor, referring him to our former letter ... ..	0	3	6
Dec. 9th. Term fee ... ..	0	15	0
1877.			
Feb. 20th. Drawing affidavit ... ..	0	4	0
Engrossing same ... ..	0	1	4
Attending on Mr. H., reading over same, and attend- ing him on being sworn ... ..	0	6	8
Paid oath ... ..	0	1	6
Copy affidavit for adverse solicitor ... ..	0	1	4
Drawing memorandum, filing same, and attendance	0	3	4
Stamp and copy ... ..	0	2	0
Perusing affidavit of Mr. H. in support of sum- mons ... ..	0	2	4
Instructions for affidavit to oppose summons ...	0	6	8
Drawing same ... ..	0	8	0
Engrossing same ... ..	0	2	8
Attending being sworn and paid ... ..	0	8	2
Copy for adverse solicitor ... ..	0	2	8

\* These various items of the charges should be set on a separate sheet.  
See note preceding page.

		Lower Scale.		
		£	s	d
	Attending him therewith ... ..	0	2	6
	Drawing minute, filing same, and attendance ...	0	3	4
	Stamp and copy... ..	0	2	0
	Drawing brief for counsel to oppose, summons and copy ... ..	0	13	4
	Copy affidavits ... ..	0	6	8
	Attending Mr. P. and feeing him to attend summons	0	6	8
	Paid his fee and clerk ... ..	2	4	6
	Attending summons. Judge did not fix a day ...	0	6	8
April 21st.	Attending summons; order made ...	0	6	8
	Instructions for affidavit of discovery ...	0	6	8
	Drawing same ... ..	0	6	0
	Engrossing same ... ..	0	2	0
	Writing agent at Liverpool therewith ...	0	3	6
	Attending notary with extract from log-book for translation ... ..	0	6	8
27th.	Attending on adverse solicitor on his inspection of documents ... ..	0	6	8
	Attending engaging interpreter ... ..	0	6	8
	Instructions for brief ... ..	2	0	0
	Drawing same ... ..	2	16	0
	Copy for Mr. B. ... ..	0	15	4
	Like of pleadings, and protest and deposition ...	0	17	0
	Copy brief for Mr. P. ... ..	0	15	4
	Like of pleadings and documents ... ..	0	17	0
	Attending Mr. B. and feeing him for hearing ...	0	6	8
	Paid his fee and clerk ... ..	16	5	0
	Copy brief for Mr. B. ... ..	0	15	4
	Like of pleadings and documents ... ..	0	17	0
	Attending Mr. P. and feeing him for hearing ...	0	6	8
	Paid his fee and clerk ... ..	11	0	0
	Attending Mr. B. and appointing consultation ...	0	6	8
	Paid his fee and clerk ... ..	2	9	6
	Like attendance on Mr. P. ... ..	0	3	4
	Paid his fee and clerk ... ..	1	3	6
	Drawing <i>precipe</i> for <i>subpana</i> and attendance ...	0	6	8
	Paid stamp thereon ... ..	0	1	0
	Writing agent at Yarmouth therewith ... ..	0	3	6
May 28th.	Attending consultation ... ..	0	13	4
	Attending hearing, when the judge, after hearing evidence and counsel, pronounced for the tender with costs ... ..	3	3	0
	Paid interpreter ... ..	4	4	0
	Perusing letter from agent at Liverpool relative to payment to master and other witnesses, writing in reply ... ..	0	3	6
	Drawing bill of costs from tender ... ..	1	0	0
	Paying outports ... ..	0	6	8
	Perusing and copy agent's charges ... ..	0	13	4
	Attending adverse solicitors with costs ... ..	0	2	6
	Attending filing costs ... ..	0	3	4

					Lower Scale.		
					£	s.	d.
Attending taxation	...	...	...	...	0	16	8
Paid stamp thereon	...	...	...	...	1	15	6
Attending agreeing amount of taxed costs	...	...	...	...	0	6	8
Attending receiving same	...	...	...	...	0	6	8
Attending obtaining decree	...	...	...	...	0	6	8
Paid stamp thereon	...	...	...	...	0	10	0
Copy and service	...	...	...	...	0	6	8
Paid fee on examination of witnesses	...	...	...	...	0	12	0
Term fee	...	...	...	...	0	15	0
Outport charges.							

FORM C.

*The Emerald.*

(Plaintiffs' costs in an ordinary action for damage by collision, with numerous interlocutory proceedings.)

					Lower Scale.		
					£	s.	d.
1876.							
June 16th. Instructions to sue	...	...	...	...	0	6	8
Writ of summons	...	...	...	...	0	6	8
Paid stamp thereon	...	...	...	...	0	5	0
Endorsement of claim	...	...	...	...	0	2	6
Writing Mr. B., agent for owners of <i>Emerald</i> , informing him of action which had been entered against the <i>Streamlet</i> , and requiring him to appear and give bail to action without expense of an arrest	...	...	...	...	0	3	6
30th. Writing Mr. B., requiring him to arrange for appearance and bail to be given to action at once, as I was instructed to proceed	...	...	...	...	0	3	6
July 3rd. Making copy writ for service, extra length	...	...	...	...	0	3	0
Attending adverse solicitors therewith, and obtaining their undertaking to appear	...	...	...	...	0	6	8
Attending adverse solicitors, when they served me with note of appearance, and perusing same	...	...	...	...	0	3	4
11th. Attending adverse solicitors, when they served me with notice of bail having been given by commission, and perusing same	...	...	...	...	0	3	4
Attending making inquiries as to the sufficiency of the proposed sureties	...	...	...	...	0	6	8
Afterwards attending searching as to due execution of bail bond, and paid search	...	...	...	...	0	7	8
14th. Instructions to defend counterclaim	...	...	...	...	0	6	8
Preparing <i>præcipe</i> for commission to take bail, and attending in the registry filing same	...	...	...	...	0	6	8
Paid stamp on	...	...	...	...	0	5	0
Paid for commissioner under seal, and executing	..	..	..	..	2	0	2
Writing client therewith and thereon for execution	...	...	...	...	0	3	6



	Lower Scale.		
	£	s.	d.
Attending adverse solicitors, when they served me with copy summons to direct me to give bail to answer counterclaim, and perusing same ... ..	0	1	8
18th. Attending summons; order made for plaintiffs to give bail to answer defendants' counterclaim within three days ... ..	0	6	8
25th. Attending Mr. L. before a commissioner on his signing bail bond ... ..	0	6	8
Paid commissioner for executing bail papers, one surety ... ..	1	1	0
Drawing and engrossing, notice of bail having been given by commissioner ... ..	0	1	6
Attending adverse solicitors, serving them therewith	0	2	6
Drawing and engrossing affidavit as to service of notice of bail ... ..	0	6	6
Attending to be sworn thereto, and paid oath ... ..	0	8	2
Attending on the registry filing bail papers ... ..	0	6	8
Paid stamps thereon ... ..	0	8	0
October. Attending retaining Mr. C. ... ..	0	3	4
Paid his fee and clerk ... ..	1	3	6
Instructions for drawing and engrossing Preliminary Act ... ..	0	6	8
Instructions for statement of claim ... ..	0	13	4
Drawing same ... ..	0	10	0
Attending Mr. C. with copy of statement of claim, and seeing him to peruse and settle same ... ..	0	6	8
Paid his fee and clerk's ... ..	2	4	6
Attending counsel on conference on his finally settling statement of claim ... ..	0	6	8
Copy statement of claim for printer ... ..	0	3	4
Examining proof sheet of statement of claim... ..	0	1	6
Paid printer's account ... ..	1	7	6
Attending in the registry, searching if defendants' Preliminary Act filed, found it was not, and filing plaintiffs' Preliminary Act ... ..	0	6	8
Paid searching ... ..	0	1	0
Paid stamp on Preliminary Act ... ..	0	5	0
Notice to adverse solicitors that I had filed Preliminary Act, and requiring them to file their Preliminary Act at once, and service ... ..	0	4	0
Summons to direct the defendants to file their Preliminary Act; pleadings to be delivered notwithstanding the vacation ... ..	0	3	8
Paid stamp on summons ... ..	0	2	0
Copy summons to file ... ..	0	2	0
Copy and service of summons on adverse solicitors ... ..	0	3	6
11th. Attending summons; order made for Preliminary Act to be filed in ten days ... ..	0	6	8
Paid for order ... ..	0	3	0
Copy and service of order on adverse solicitors ... ..	0	3	6

BILLS OF COSTS.

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	Lower Scale.		
	£	s.	d.
24th. Defendants having filed their Preliminary Act, making copy statement of claim to deliver ...	0	1	6
31st. Attending delivering same ... ..	0	3	4
Attending adverse solicitors, when they served me with copy summons to direct plaintiffs to furnish particulars of claim, and perusing same ... ..	0	1	8
Sittings fee ... ..	0	15	0

*Michaelmas Sittings.*

Nov. 1st. Attending summons for particulars of claim ; order made for same to be delivered within a week ... ..	0	6	8
9th. Drawing and engrossing particulars of plaintiffs' claim ... ..	0	9	0
Attending adverse solicitors, serving them there-with ... ..	0	2	6
11th. Summons to direct an early day to be appointed for hearing of cause as plaintiffs were detaining witnesses ... ..	0	3	0
Paid stamp on summons ... ..	0	2	0
Copy summons to file ... ..	0	2	0
Copy and service of summons on adverse solicitors...	0	3	6
14th. Attending summons for day for hearing ; same adjourned till Friday ... ..	0	6	8
Writing client as to an offer made by defendants ...	0	3	6
16th. Having received instructions from client, writing adverse solicitors refusing offer, saying that my client was incurring expenses of over £10 per week on account of detention of witnesses ...	0	3	6
17th. Attending adjourned summons before registrar ; order made for cause to be heard on the 29th instant ... ..	0	6	8
Paid for order ... ..	0	3	0
Copy and service of order on adverse solicitors ...	0	3	6
<i>Subpoena ad test.</i> ... ..	0	6	8
Paid stamp ... ..	6	2	6
Copy and service of same on R. ... ..	0	6	8
Writing client informing him of the day appointed for hearing of cause, and requiring him to arrange for the attendance of witnesses ... ..	0	3	6
21st. Attending adverse solicitors, when they waited upon me and stated that, owing to the absence of their witnesses, they could not have cause heard on the 29th instant, and writing me to consent to a postponement of hearing, conferring thereon, when I informed them that I could not consent to any postponement as I was detaining witnesses at great expense, when they were to apply to the Court ... ..	0	6	8

	Lower Scale s. d.
22nd. Attending adverse solicitors, when they served me with copy summons to direct hearing of cause to be postponed, and to allow them further time for delivering statement of defence, and perusing same ... ..	0 1 8
Perusing affidavit in support ... ..	0 3 4
24th. Attending summons; order made postponing cause until a day to be arranged; defendants also allowed three days further time for delivering statement of defence... ..	0 6 8
Preparing telegram to client, informing him of postponement of hearing, and requiring him to stop attendance of witnesses; afterwards attending and dispatching same and paid ... ..	0 7 8
Attending adverse solicitors in the registry, when the hearing of cause was appointed for the 15th prox.	0 6 8
Writing client informing him thereof ... ..	0 2 6
Attending R. with notice of postponement of action, and arranging for him to attend hearing on his <i>subpœna</i> on the 15th prox., without expense of fresh <i>subpœna</i> ... ..	0 6 8
27th. Summons to direct defendants to file affidavit of documents ... ..	0 3 0
Paid stamp on summons ... ..	0 2 0
Copy summons to file ... ..	0 2 0
Copy and service of summons on adverse solicitor ...	0 3 6
28th. Attending adverse solicitors, when they served me with copy summons to direct me to file affidavit of documents, and perusing same ... ..	0 1 8
Dec. 1st. Attending summons for discovery of documents; order made for affidavit to be filed within a week... ..	0 6 8
Paid for order ... ..	0 3 0
Copy and service of order on adverse solicitors ...	0 3 6
Attending defendants' summons for discovery; order made for affidavit to be filed in a week ... ..	0 6 8
3rd. Attending adverse solicitors, when they served me with printed copy of statement of defence, and perusing same ... ..	0 6 8
Attending adverse solicitors, bespeaking and afterwards obtaining further copies of statement of defence ... ..	0 4 0
Paid for same ... ..	0 4 2
Instructions for affidavit of documents ... ..	0 6 8
Drawing affidavit ... ..	1 4 0
Engrossing same ... ..	0 8 0
Writing client, enclosing affidavit to be sworn ...	0 3 6
Agents attending clients to be sworn to affidavit, and paid oath ... ..	0 8 2
Instructions for reply in answer to defendants' counter-claim ... ..	0 13 4

	Lower Scale.		
	£	s.	d.
Drawing reply ... ..	0	5	0
Attending Mr. C. with copy reply, and seeing him to settle same ... ..	0	3	4
Paid his fee and clerk ... ..	1	3	6
Copy reply to deliver ... ..	0	1	0
Attending adverse solicitors, delivering same ...	0	3	4
Attending adverse solicitors, bespeaking and afterwards obtaining copy of defendants' Preliminary Act for the printer ... ..	0	4	0
Perusing and considering same ... ..	0	3	4
Copy plaintiffs' Preliminary Act for the printer ...	0	3	6
The like reply ... ..	0	1	0
Attending adverse solicitors, and in the registry examining proof sheet of Preliminary Acts ... ..	0	3	4
Paid stamps ... ..	0	1	6
Paid printer's account ... ..	1	1	0
Copy reply and Preliminary Acts for delivery ...	0	1	8
Attending delivering same ... ..	0	2	6
Two copies Preliminary Acts, and reply for the Court ... ..	0	3	4
The like statement of claim ... ..	0	3	0
The like statement of defence... ..	0	3	0
Attending depositing pleadings in Court ... ..	0	3	4
Attending setting cause down... ..	0	6	8
Paid stamps ... ..	1	0	0
Preparing <i>præcipe</i> for Trinity masters, and attending in the registry filing same ... ..	0	6	8
Paid stamp on <i>præcipe</i> ... ..	0	10	0
Drawing and engrossing notice of trial ... ..	0	3	4
Attending adverse solicitors therewith ... ..	0	2	6
8th. Attending adverse solicitors, and arranging for a mutual inspection of documents on both sides without an application to the Court ... ..	0	6	8
9th. Having received letter from adverse solicitors requiring a further postponement of hearing, attending them in consequence thereon, informing them I was detaining witnesses at great expense, and could not, therefore, consent to any postponement, and they were to apply to the Court thereon if necessary ... ..	0	6	8
11th. Drawing and engrossing notice to produce ...	0	5	0
Attending adverse solicitors, serving them therewith ... ..	0	2	6
12th. Attending adverse solicitors, when they served me with copy summons to direct the hearing of cause to be further postponed, and perusing same ... ..	0	1	0
13th. Attending summons; order made for hearing of cause to be postponed until the 19th instant ...	0	6	8
Preparing telegram to client, informing him of the date appointed for hearing of cause, and advising as to the attendance of witnesses; afterwards attending despatching telegram, and paid ... ..	0	7	8

	Lower Scale
	£   s   d.
Attending one of the witnesses in consequence, and arranging for him to stay in London until trial ...	0 6 8
Like attendance on Captain J. ... ..	0 6 8
Perusing notices to produce ... ..	0 6 8
Attending adverse solicitors, when they handed me certified copy of statement of master of the <i>Streamlet</i> before receiver of wreck, and inspecting and admitting ... ..	0 6 8
15th. Notice to adverse solicitors that I was ready to exchange affidavits of documents, and service ...	0 4 0
Copy plaintiffs' affidavit of documents for adverse solicitors ... ..	0 8 0
Attending in the registry filing original ... ..	0 3 4
Paid stamp thereon ... ..	0 2 5
Attending adverse solicitors exchanging copy affidavits ... ..	0 2 6
Perusing and considering defendants' affidavit of documents ... ..	0 3 4
Attending adverse solicitors, giving them an inspection of log-book and other documents of <i>Streamlet</i>	0 6 8
Attending adverse solicitors, inspecting documents of <i>Emerald</i> , and bespeaking copies ... ..	0 6 8
Paid for same ... ..	0 6 0
18th. Attending retaining Mr. M., Q.C. ... ..	0 3 4
Paid his fee and clerk ... ..	1 3 6
Instructions for brief, attendances on witnesses, &c.	6 6 0
Drawing brief ... ..	3 15 0
Copy for Mr. M., Q.C., including documents, 90 fos. ...	1 10 0
Copy for Mr. C. ... ..	1 10 0
Two copies plaintiffs' notice to produce, to annex ...	0 4 0
The like defendants' notice to produce ... ..	0 4 0
Two copies statements before receiver of wreck, for counsel ... ..	0 16 0
Two copies for counsel ... ..	0 9 4
Two copies plaintiffs' affidavit of documents for counsel ... ..	0 13 4
The like defendants' affidavits ... ..	0 16 0
Two copies statement of claim for counsel ... ..	0 3 0
Two copies statement of defence ... ..	0 3 0
Two copies Preliminary Acts ... ..	0 3 4
Two copies do., reply ... ..	0 3 4
Attending Mr. M., Q.C., with brief and papers, and feeing him for the hearing ... ..	0 13 4
Paid his fee ... ..	21 0 0
Paid his clerk ... ..	0 15 0
Attending Mr. C. with brief and papers, and feeing him for the hearing ... ..	0 6 6
Paid his fee ... ..	15 15 0
Paid his clerk ... ..	0 10 0
Attending Mr. M., Q.C., and feeing him for consultation ... ..	0 6 8

	Lower Scale.		
	£	s.	d.
Paid his fee and clerk ... ..	2	9	6
Attending Mr. C., and seeing him for consultation ...	0	3	4
Paid his fee and clerk ... ..	1	3	6
Writing shorthand writer to attend hearing ... ..	0	3	6
Attending consultation with both counsel ... ..	0	13	4
Paid for room ... ..	0	5	0
Attending Court all day on hearing of cause, when the judge found the <i>Emerald</i> alone to blame for collision, and condemned her owners in damages and costs, and clerk's attendance with witnesses ... ..	3	3	0
Paid on production of witnesses ... ..	1	14	0
Notice to clients of result of hearing ... ..	0	3	6
Attending the witnesses and arranging amount of their expenses, and paying them on account of their detention ... ..	0	6	8
Attending bespeaking and afterwards obtaining final decree under seal ... ..	0	6	8
Paid stamp thereon ... ..	0	10	0
Copy and service of decree on adverse solicitors ...	0	4	6
Paid shorthand writer's account and attendance ...	2	2	0
Attending paying Trinity master's fees ... ..	0	6	8
Paid same ... ..	8	8	0
Sittings fee ... ..	0	15	0

*Hilary Sittings.*

1877. Feb. 6th. Instructions for claim ... ..	0	6	8
Drawing claim ... ..	0	12	0
Engrossing same ... ..	0	4	0
Copy for adverse solicitors ... ..	0	4	0
Perusing and considering report of survey ... ..	0	2	0
Copy for adverse solicitors ... ..	0	2	0
Copy for use of cause ... ..	0	2	0
Perusing and considering accounts and vouchers ...	1	6	8
Copy for adverse solicitors ... ..	1	6	8
Copy for use of cause ... ..	1	6	8
Attending adverse solicitors, serving them with copy claim and proofs ... ..	0	2	6
Writing adverse solicitors, informing them that I would not file original claim for a few days, to enable them to settle same without reference if possible ... ..	0	3	6
17th. On receipt of letter from adverse solicitors offering £450 in settlement of claim, and writing clients informing them thereof, and requiring instructions ... ..	0	3	6
23rd. Having received letter from clients with instructions, writing adverse solicitors informing them that my clients would be considerable losers even if they received the total amount claimed, but with a view to a settlement offering to accept £475 ...	0	3	6

	Lower Scale
	£ s d
Several attendances on adverse solicitors, and ultimately settling claim for £459 and costs ...	0 13 4
Attending adverse solicitors, obtaining cheque for agreed damages, and giving receipt and stamp ...	0 6 9
Drawing affidavit of increase ...	0 18 0
Engrossing same ...	0 6 0
Attending deponent to be sworn thereto and paid oath ...	0 8 2
Copy affidavit for adverse solicitors ...	0 6 0
Paid stamp on affidavit ...	0 2 0
Drawing bill of costs	
Copy for the registrar	3 8 0
Copy for adverse solicitors	
Perusing and considering country agent's expenses...	0 1 8
Copy for the registrar ...	0 1 8
Copy for adverse solicitors ...	0 1 8
Attending adverse solicitors with bill of costs for taxation ...	0 3 4
The like attendance in the registry ...	0 3 4
Attending taxation ...	1 0 0
Attending agreeing costs as taxed ...	0 6 8
Attending adverse solicitors, obtaining cheque for taxed costs, and giving receipt and stamp ...	0 6 9
Sittings fee ...	0 15 0
Postage ...	0 5 0

## FORM D.

*The Egbert.*

(Plaintiffs' costs in an ordinary action for damage by collision.)

	Higher Scale
	£ s d
1876.	
Sept. 25th. Instructions to sue ...	0 13 4
Writ of summons ...	0 13 4
Paid stamp on writ ...	0 10 0
Endorsement of claim ...	0 2 6
Drawing affidavit to lead warrant ...	0 5 0
Engrossing same ...	0 1 8
Attending to be sworn thereto, and paid oath ...	0 8 2
Paid filing ...	0 2 0
Copy writ for service (extra 6 fcs. length) ...	0 1 4
Writing agents at Southampton with writ and copy, instructing them to serve same on the <i>Ethelred</i>	0 12 0
Paid agents for service of writ and letter	
26th. Attending adverse solicitors, when they served me with copy notice of appearance, and persuading same	0 3 4

BILLS OF COSTS.

529

	Higher Scale.		
	£	s.	d.
Attending adverse solicitors, when they waited upon me and explained the importance of obtaining immediate release of the <i>Egbert</i> , and conferring and finally arranging to file consent to release upon receiving their undertaking for bail; afterwards receiving and perusing undertaking ...	0	6	8
27th. Attending adverse solicitors, when they served me with notice of bail, and perusing same ...	0	6	8
Attending making inquiries as to the sufficiency of the proposed sureties ... ..	0	3	4
Attending in the registry, search as to due execution of bail bond, and paid search ... ..	0	7	8
Oct. 3rd. Making copy writ for adverse solicitors at their request (extra length) ... ..	0	4	0
9th. Attending adverse solicitors, when they served me with copy summons to direct all proceedings to be stayed until bail in £3000 to answer defendants' counterclaim and in £300 to answer costs had been given, and perusing same ... ..	0	1	8
Writing clients informing them thereof and requiring instructions for bail ... ..	0	3	6
11th. Attending summons, order made for all proceedings to be stayed until bail in £2500 to answer counterclaim and £300 to answer costs had been given ... ..	0	6	8
23rd. Instructions to defend counterclaim ... ..	0	13	4
Preparing <i>præcipe</i> for notice of bail and attending the marshal therewith filing same ... ..	0	6	8
Paid stamp on <i>præcipe</i> ... ..	0	5	0
Copy notice of bail for adverse solicitors and attending serving them therewith... ..	0	6	8
Paid for marshal's report as to the sufficiency of the proposed sureties ... ..	0	10	0
Preparing <i>præcipe</i> for bail bond and attending in the registry, filing same ... ..	0	6	8
Paid stamp ... ..	0	5	0
Paid stamp on bail bond ... ..	0	7	6
Attending the sureties in the registry when they signed bail bond ... ..	0	6	8
Attending filing bail bond ... ..	0	6	8
Paid stamp ... ..	0	2	0
Attending retaining Mr. C. ... ..	0	6	8
Paid his fee and clerk's ... ..	1	3	6
Drawing and engrossing Preliminary Act ... ..	0	6	8
Instructions for statement of claim ... ..	2	2	0
Drawing statement of claim ... ..	1	1	0
Attending Mr. C. with copy statement of claim and feeing him to peruse and settle same ... ..	0	6	8
Paid his fee and clerk's ... ..	2	4	6
Attending counsel in conference on his finally settling statement of claim ... ..	0	6	8

M M



	Higher Scale
	£ s d.
Copy statement of claim for the printer ... ..	0 3 0
Examining proof-sheets of statement of claim ... ..	0 1 6
Paid printer's account ... ..	0 14 0
Copy statement of claim for adverse solicitors ... ..	0 2 3
Attending delivering same ... ..	0 6 8
Attending filing plaintiffs' Preliminary Act ... ..	0 6 8
Paid stamp thereon ... ..	0 5 0
Sittings fee ... ..	0 15 0

*Michaelmas Sittings.*

Attending adverse solicitors, when they served me with copy statement of defence and counterclaim, and perusing same ... ..	0 13 4
Attending adverse solicitors bespeaking, and afterwards obtaining, further copies statement of defence	0 4 0
Paid for same ... ..	0 3 8
Attending adverse solicitors in conference, informing them that I was detaining witnesses on shore at a great expense, and should have to do so until cause was heard, and writing them to consent to an early day being appointed for hearing of cause, when they were to obtain instructions ... ..	0 6 8
6th. Summons to direct defendants to file affidavit of discovery ... ..	0 6 8
Paid stamp on summons ... ..	0 3 0
Copy summons to file ... ..	0 2 0
Copy and service of summons on adverse solicitors	0 4 6
Instructions for reply in answer to defendants' counterclaim ... ..	1 1 0
Drawing reply ... ..	0 10 0
Attending Mr. C. with copy reply, and seeing him to peruse and settle same ... ..	0 6 8
Paid his fee and clerk's ... ..	1 3 6
Copy reply for the printer ... ..	0 1 0
Examining proof-sheet of reply ... ..	0 0 6
Copy reply to deliver ... ..	0 1 0
Attending delivering same ... ..	0 6 8
Perusing and considering Preliminary Act ... ..	0 3 4
Copy plaintiffs' Preliminary Act for printer ... ..	0 3 6
Attending printer with copies Preliminary Acts, and instructing him to furnish proof-sheet of same ... ..	0 3 4
Notice to adverse solicitors of appointment to examine Preliminary Acts and service ... ..	0 4 0
Attending adverse solicitors in the registry, examining proof-sheet of Preliminary Acts ... ..	0 6 8
Paid stamps ... ..	0 1 6
Paid printer's account ... ..	1 1 0
Two copies Preliminary Acts for the Court ... ..	0 4 6
The like statement of claim ... ..	0 4 6
The like statement of defence ... ..	0 4 0
The like reply ... ..	0 1 6

	Higher Scale.		
	£	s.	d.
Attending depositing printed pleadings in Court ...	0	6	8
Attending setting down cause ... ..	0	6	8
Paid stamp ... ..	2	0	0
Preparing <i>præcipe</i> for Trinity masters, and attend- ing in the registry filing same ... ..	0	6	8
Paid stamp ... ..	0	10	0
Drawing and engrossing notice of trial ... ..	0	1	6
Attending adverse solicitors serving them therewith	0	2	6
8th. Summons to direct an early day to be appointed for hearing of action... ..	0	6	8
Paid stamp on summons ... ..	0	3	0
Copy summons to file ... ..	0	2	0
Copy and service of summons on adverse solicitors	0	4	6
Attending adverse solicitors, when they served me with copy summons to direct plaintiffs to file affi- davit of discovery and perusing same ... ..	0	1	8
10th. Attending plaintiffs' summons for discovery, order made for affidavit to be filed within a week	0	6	8
Paid for order ... ..	0	5	0
Copy and service of summons on adverse solicitors	0	6	8
Attending defendants' summons for discovery, order made for affidavit to be filed within a week ...	0	6	8
Attending summons for day for hearing of cause, order made ... ..	0	6	8
Paid for order ... ..	0	5	0
Writing clients informing them of order made on summons, and requiring them to let me have in- structions for affidavit of documents ... ..	0	3	6
Attending adverse solicitors in the registry, when the hearing of cause was fixed for the 30th instant ...	0	6	8
Attending the translator with documents, and in- structing him to translate same ... ..	0	6	8
Paid translator ... ..	3	5	1
16th. Attending adverse solicitors, when they served me with note to produce documents at the hear- ing, and perusing same ... ..	0	13	4
Instructions for affidavit of C. G. as to documents ...	0	6	8
Drawing affidavit ... ..	0	8	0
Engrossing affidavit ... ..	0	2	8
Attending deponent to be sworn thereto, and paid oath	0	8	2
Copy affidavit for adverse solicitors ... ..	0	2	8
Attending in the registry filing originals ... ..	0	6	8
Paid fee ... ..	0	2	0
Notice to adverse solicitors that I was ready to ex- change affidavits of documents and service ...	0	4	0
Perusing defendants' affidavit of discovery ... ..	0	3	4
17th. Writing clients requiring them to arrange for the attendance of the witnesses the following Tuesday	0	3	6
Attending adverse solicitors in conference, and arranging for a mutual inspection of documents on both sides ... ..	0	6	8

	Higher Rank £ s d
Attending adverse solicitors in conference, and giving them an inspection of documents of <i>Stockholm</i> , and at their request arranging to supply them with copy of same ... ..	0 6 8
Attending adverse solicitors inspecting log books, &c., of <i>Egbert</i> , and bespeaking copies ... ..	0 6 8
Perusing and considering documents... ..	0 8 0
Attending translator with documents, and instructing him to make copy of same for adverse solicitor	0 6 8
20th. Drawing and engrossing note to produce ...	0 7 6
Attending adverse solicitors serving them therewith	0 2 6
27th. Writing adverse solicitors a long letter in reply to theirs, complaining of my not producing the log-book of the <i>Stockholm</i> , and that no statements had been made before receiver of wreck by the <i>Stockholm</i> ... ..	0 3 6
28th. Adverse solicitors having refused to accept depositions before consul unless further affidavit of documents filed, instructions for further affidavit accordingly .. ..	0 6 8
Drawing affidavit ... ..	0 6 0
Engrossing same .. ..	0 2 0
Attending deponent to be sworn thereto, and paid oath ... ..	0 8 2
Copy affidavit for adverse solicitors ... ..	0 2 0
Attending serving them therewith ... ..	0 2 6
Paid stamp on original ... ..	0 2 0
Attending at the London Bridge registry, arranging for an official to attend in Court and produce official log book of <i>Egbert</i> without expense of a subpoena ... ..	0 6 8
Paid conduct money to official ... ..	1 1 0
Attending arranging for the attendance of an interpreter ... ..	0 6 8
Attending retaining Mr. B., Q.C. ... ..	0 6 8
Paid his fee and clerk's ... ..	1 3 6
Instructions for brief ... ..	6 6 0
Drawing brief ... ..	5 0 0
Copy for Mr. B., Q.C. ... ..	1 13 4
Copy for Mr. C. ... ..	1 13 4
Two copies, plaintiffs' notice to produce to annex ...	0 4 0
The like defendants' do. ... ..	0 4 0
The like defendants' further do. ... ..	0 4 0
Two copies documents referred to in plaintiffs' affidavit of documents for counsel ... ..	1 18 8
Two copies depositions before consul at Southampton for counsel ... ..	0 5 4
Two copies plaintiffs' affidavits of documents for counsel ... ..	0 9 4
The like defendants' do. ... ..	0 8 0
Two copies note of protest of <i>Stockholm</i> for counsel...	0 2 8

	Higher Scale.		
	£	s.	d.
Two copies extracts from log book, &c., of <i>Egbert</i> for counsel ... ..	0	16	0
Two copies correspondence for counsel ... ..	0	5	4
Two copies statement of claim for counsel ... ..	0	4	6
The like defence ... ..	0	4	0
The like reply ... ..	0	1	6
The like Preliminary Acts ... ..	0	4	6
Attending Mr. B., Q.C., with brief and papers, and feeing him for the hearing ... ..	1	1	0
Paid his fee ... ..	21	0	0
Paid his clerk ... ..	0	15	0
Attending Mr. C. with brief and papers, and feeing him for the hearing ... ..	0	13	4
Paid his fee ... ..	15	15	0
Paid his clerk ... ..	0	10	0
Attending Mr. B., Q.C., and feeing him for consul- tation ... ..	0	6	8
Paid his fee and clerk ... ..	2	9	6
Attending Mr. C., and feeing him for consultation ...	0	6	8
Paid his fee and clerk ... ..	1	3	6
Writing shorthand writer to attend hearing ... ..	0	3	6
30th. Attending consultation with both counsel ... ..	0	13	4
Paid for room ... ..	0	5	0
Attending Court all day on hearing of action, when, after hearing evidence and arguments of counsel on both sides, Court pronounced the <i>Egbert</i> solely to blame for collision, and condemned her owners in damages and costs... ..	2	2	0
Clerk's attendance with witnesses ... ..	1	1	0
Paid stamps on production of witnesses ... ..	1	15	0
Attending paying Trinity master's fees ... ..	0	6	8
Paid same ... ..	8	8	0
Paid shorthand writer's account ... ..	2	8	0
Paid interpreter's account and attendance ... ..	4	4	0
Paid for final decree under seal ... ..	1	0	0
Copy for service... ..	0	2	0
Service thereof ... ..	0	2	6
Dec. 4th. Instructions for affidavit of A. B. in support of claim for lost effects ... ..	0	6	8
Drawing affidavit ... ..	0	9	0
Engrossing same ... ..	0	3	0
Attending deponent to be sworn thereto, and paid oath and exhibits ... ..	0	11	8
Instructions for affidavit of C. D. as to the loss of his effects ... ..	0	6	8
Drawing affidavit ... ..	0	9	0
Engrossing same ... ..	0	3	0
Attending deponent to be sworn thereto ... ..	0	6	8
Paid oath, and two exhibits ... ..	0	5	0
Instructions for affidavit of E. F. as to the loss of his effects ... ..	0	6	8

	Higher Scale.		
	£	s.	d.
Drawing affidavit ... ..	0	9	0
Engrossing same ... ..	0	3	0
Attending deponent before a commissioner on his being sworn to affidavit ... ..	0	6	8
Paid oath, two exhibits and interpreter ... ..	0	5	0

## FORM E.

*The John Wells and The Loreley.*

(Costs of a consolidated action, defendants in first action being plaintiffs in the second action. Bill of costs on behalf of the owners of *The John Wells*, 1875, G. No. 27, *The Loreley*.)

*Loreley*, Lower Scale.

*John Wells*, Higher Scale.

	Lower Scale.		
	£	s.	d.
1875.			
Nov. 12th. Instructions to sue ... ..	0	6	8
Drawing affidavit to lead writ... ..	0	6	0
Engrossing same ... ..	0	2	0
Attending to be sworn thereto, and paid oath ... ..	0	8	2
Writ of summons ... ..	0	6	8
Paid stamp on writ ... ..	0	5	0
Endorsement of claim ... ..	0	2	6
Paid stamp on affidavit... ..	0	2	0
Copy writ for service ... ..	0	2	0
Attending the marshal with writ and copy, and in- structing him as to service thereof ... ..	0	6	8
Paid marshal's fee ... ..	2	0	0
Preparing telegram to collector, requiring him to detain the <i>Loreley</i> until arrival of writ, and attend- ing the marshal obtaining his signature and seal thereto; afterwards attending dispatching telegram and paid ... ..	0	4	4
Attending the marshal obtaining and filing warrant executed, and perusing certificate of service ... ..	0	6	8
Paid stamp on writ ... ..	0	2	0
13th. Attending adverse solicitors, when they served me with notice of appearance, and perusing same ... ..	0	3	4
Attending adverse solicitors, when they waited upon me and explained the importance of obtaining the release of <i>The Loreley</i> , and conferring with them thereon, when I arranged to consent to release upon receiving their undertaking for bail; afterwards attending, receiving, and perusing undertaking ... ..	0	6	8
Attending in the registry filing consent to release ... ..	0	3	4
Paid stamp thereon ... ..	0	5	0
15th. Attending adverse solicitors, when they served me with notice of bail, and perusing same... ..	0	3	4

BILLS OF COSTS.

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		Lower Scale.		
		£	s.	d.
	Attending making inquiries as to the supply of the proposed sureties ... ..	0	6	8
	Attending searching as to due execution of bail bond, and paid search ... ..	0	7	8
Dec.	Summons to direct this action and <i>The John Wells</i> , 1876, G. No. 27, to be consolidated together ...	0	3	0
	Paid stamp on summons ... ..	0	2	0
	Copy summons to file ... ..	0	2	0
	Copy summons for service on adverse solicitors ...	0	1	0
	Service thereof ... ..	0	1	6
9th.	Attending summons, order made ... ..	0	6	8
	Paid for order ... ..	0	3	0
	Copy and service of order on adverse solicitors ...	0	3	0
	Sittings fee ... ..	0	15	0

1876, H. No. 26, and G. No. 27.

*Consolidated.*

1876, H. No 27.

		Higher Scale (a).		
		£	s.	d.
	Preparing <i>præcipe</i> for <i>caveat</i> warrant, and attending in the registry filing same ... ..	0	6	8
	Paid stamp on <i>præcipe</i> ... ..	0	5	0
	Attending adverse solicitors, when they served me with copy writ, and giving undertaking to appear	0	6	8
	Instructions to defend ... ..	0	13	4
	Attending in the registry, looking up action, taking particulars thereof, and paid search ... ..	0	7	8
	Entering appearance ... ..	0	6	8
	Paid stamp ... ..	0	2	0
	Copy and service of notice of appearance on adverse solicitors ... ..	0	6	8
	Preparing <i>præcipe</i> for note of bail, and attending the marshal therewith, filing same ... ..	0	6	8
	Paid stamp ... ..	0	5	0
	Copy and service of notice of bail on adverse solicitors	0	6	8
15th.	Paid for report as to sufficiency of proposed sureties ... ..	0	10	0
	Preparing <i>præcipe</i> for bail bond and attending in the registry filing same ... ..	0	6	8
	Paid stamp ... ..	0	5	0
	Paid stamp on bail bond ... ..	0	7	6
	Attending the sureties in the registry, when they signed bail bond ... ..	0	6	8
	Attending filing bail bond ... ..	0	6	8
	Paid stamp thereon ... ..	0	2	0
	Attending Messrs. S. & Co., when they served me with notice of appearance in lieu of Messrs L. & H., and perusing same ... ..	0	3	4
	Drawing and engrossing Preliminary Act ... ..	0	6	8

(a) Action entered in £2000. See *ante*, p. 360.

	Higher Scale
	£   s   d.
Attending in the registry filing Preliminary Act ...	0 6 8
Paid stamp thereon ... ..	0 5 0
The like on my own ... ..	0 5 0
Notice to adverse solicitors that I had filed Preliminary Act and service ... ..	0 4 6
Attending adverse solicitors, when they served me with copy summons to allow them further time for delivering statement of claim, and perusing same	0 1 6
Attending summons, order made for statement to be delivered in a week... ..	0 6 8
28th. Attending adverse solicitors, when they served me with copy statement of claim, and perusing same	0 13 4
Attending adverse solicitors bespeaking, and afterwards obtaining, further copies statement of claim	0 4 0
Paid for same ... ..	0 5 1
Attending retaining Mr. C. ... ..	0 6 8
Paid his fee and clerk's ... ..	1 3 6
Instructions for statement of defence and counterclaim ... ..	1 6 8
Drawing statement of defence and counterclaim ...	1 1 0
Attending Mr. C. with copy statement of claim, and seeing him to peruse and settle same ... ..	0 6 6
Paid his fee and clerk ... ..	2 4 6
Attending counsel in conference on his finally settling statement of defence ... ..	0 6 8
1876.	
Jan. 6th. Summons for further time for delivering statement of defence ... ..	0 6 6
Paid stamp on summons ... ..	0 3 0
Copy summons to file ... ..	0 2 0
Copy and service of summons on adverse solicitors	0 4 6
Attending summons, order made ... ..	0 6 8
Paid stamp on order ... ..	0 3 0
Copy and service of order on adverse solicitors ...	0 3 6
8th. Copy statement of defence and counterclaim, for printer ... ..	0 3 6
Examining proof-sheet of statement of defence ...	0 1 10
Paid printer's account .. ..	0 10 0
Copy statement of defence to deliver ... ..	0 2 9
11th. Attending delivering same ... ..	0 6 6
Sittings fee ... ..	0 15 0

*Hilary Sittings*

15th. Attending adverse solicitors, when they served me with copy reply, and perusing same ... ..	0 13 4
Feb. 1st. Having received further letter from adverse solicitors requiring to know if I could consent to a day in the following month being appointed for hearing, writing them in reply ... ..	0 3 6

	Higher Scale.
	£ s. d.
2nd. Having received instructions, writing adverse solicitors that I could consent to an early day in March being appointed for the hearing ... ..	0 3 6
3rd. Attending adverse solicitors in the registry, when the 13th prox. was appointed for hearing of cause	0 6 8
<i>Subpoena ad test.</i> ... ..	0 6 8
Paid stamps ... ..	0 5 0
Two copies subpoena for service ... ..	0 5 0
Writing clients informing them the date appointed for hearing of cause, and enclosing subpoena and copies for service on independent witnesses, and instructing them thereon ... ..	0 3 6
5th. Copy Preliminary Act for printer ... ..	0 3 6
Attending adverse solicitors therewith to print with pleadings ... ..	0 2 6
Attending adverse solicitors in the registry, examining printed copy Preliminary Act ... ..	0 6 8
Attending adverse solicitors, when they served me with printed copy Preliminary Act, and perusing same ... ..	0 3 4
Attending adverse solicitors bespeaking, and afterwards obtaining, copies Preliminary Act... ..	0 4 0
Paid for same ... ..	0 4 2
16th. Two copies statement of defence for the Court ...	0 5 6
Attending adverse solicitors therewith, to lodge with printing in Court ... ..	0 2 6
Afterwards attending them in conference, and arranging for a mutual inspection of documents on both sides ... ..	0 6 8
Writing clients requiring them to let me have log book of <i>The John Wells</i> ... ..	0 3 6
Writing collector at Goole, requiring him to furnish me with certified copy deposition of master of <i>John Wells</i> and mate of <i>Loreley</i> before receiver of wreck ... ..	0 3 6
Attending adverse solicitors on conference, and arranging for them to admit certified copy statements before register of wreck ... ..	0 6 8
29th. On receipt of letter from adverse solicitors stating that the <i>Loreley</i> had sailed to Stettin with several important witnesses on board, and requiring to know if I would consent to the hearing being postponed to the end of the following month, making copy of letter, and writing clients therewith for instructions ... ..	0 3 6
Having received instructions from clients to oppose any postponement, attending adverse solicitors informing them thereof and conferring thereon, when they stated they should apply to the Court ...	0 3 6
Paid for copy statements made before receiver of wreck ... ..	0 16 5



	Higher Scale.
	<i>£ s. d.</i>
Attending adverse solicitors on their inspecting and admitting statements before receiver of wreck made by master and mate of <i>Loreley</i> , and I admitted statement of master of <i>John Wells</i> ... ..	0 6 8
Mar. 2nd. Attending adverse solicitors, when they served M. with copy summons to direct the hearing of cause to be postponed, and perusing same ...	0 1 8
Instructions for affidavit of J. H. in opposition to summons ... ..	0 6 8
Drawing affidavit ... ..	0 14 0
Engrossing same ... ..	0 4 8
Attending deponent to be sworn thereto, and paid oath ...	0 9 2
4th. Perusing and considering exhibit to affidavit of Mr. H. ... ..	0 1 4
Copy for use of cause ... ..	0 1 4
Attending serving them therewith ... ..	0 2 6
Attending in the registry filing original ... ..	0 6 8
Paid stamp thereon ... ..	0 2 0
Attending adverse solicitors, when they served me with copy joint affidavit in support of summons, and perusing same ... ..	0 3 4
7th. Attending summons before registrar, order made for cause to be postponed, plaintiffs to pay costs of adjournment ... ..	0 6 8
Preparing telegram to clients informing them of result of summons, and attending despatching same, and paid, afterwards writing confirming telegram ... ..	0 7 11
18th. Attending adverse solicitors in the registry, when the 5th prox. was appointed for the hearing of cause ... ..	0 6 8
<i>Subpœna ad test.</i> ... ..	0 6 8
Paid stamp ... ..	0 5 0
Two copies of subpœna for service ... ..	0 4 0
Writing clients informing them of date appointed for hearing of cause, and enclosing subpœna and copies for service on the independent witnesses ...	0 3 6
25th. Drawing and engrossing notice to produce log book, &c., of the <i>Loreley</i> .. ..	0 7 6
Service thereof ... ..	0 2 6
Attending adverse solicitors, when they served me with notice to produce, and perusing same ...	0 6 8
Attending adverse solicitors, giving them inspection of log book, &c., of the <i>John Wells</i> ... ..	0 6 8
Attending adverse solicitors inspecting log book, &c., of <i>Loreley</i> , and bespeaking copies ... ..	0 6 8
Paid for copies ... ..	0 7 0
30th. Attending clients in conference, and arranging for the attendance of witnesses without expense of a subpœna ... ..	0 6 8
April 4th. Attending retaining Mr. M., Q.C. ... ..	0 6 8

BILLS OF COSTS.

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				Higher Scale.		
				£	s.	d.
Paid his fee and clerk's	...	...	...	1	3	6
Instructions for brief	...	...	...	12	12	0
Drawing brief	...	...	...	6	13	0
Copy for Mr. M., Q.C.	...	...	...	2	4	4
Copy for Mr. C.	...	...	...	2	4	4
Two copies plaintiffs' note to produce to annex	...	...	...	0	4	0
The like defendants' note	...	...	...	0	4	0
Two copies statement before receiver of wreck for counsel	...	...	...	1	4	0
Two copies extract from log book, &c., of <i>Loreley</i> for counsel	...	...	...	0	14	0
Two copies extract from log book of the <i>John Wells</i> , for counsel	...	...	...	0	5	4
Two copies statement of claim for counsel	...	...	...	0	5	6
The like statement of defence...	...	...	...	0	5	6
The like reply	...	...	...	0	2	0
The like Preliminary Acts	...	...	...	0	4	6
Attending Mr. M., Q.C., with brief and papers, and feeing him for the hearing	...	...	...	1	1	0
Paid his fee	...	...	...	21	0	0
His clerk	...	...	...	0	15	0
Attending Mr. C. with brief and papers, and feeing him for the hearing	...	...	...	0	13	4
Paid his fee	...	...	...	15	15	0
Paid his clerk	...	...	...	0	10	0
Attending Mr. M., Q.C., and feeing him for consultation	...	...	...	0	6	8
Paid his fee and clerk	...	...	...	2	9	6
Attending Mr. C. and feeing him for consultation	...	...	...	0	6	8
Paid his fee and clerk	...	...	...	1	3	6
5th. Attending consultation with both counsel	...	...	...	0	13	4
Paid for use of room	...	...	...	0	5	0
Attending Court all day on hearing of cause, self and clerk, same part heard and adjourned...	...	...	...	3	3	0
Attending Mr. M., Q.C., and feeing him for further hearing	...	...	...	0	13	4
Paid his fee	...	...	...	10	10	0
Paid his clerk	...	...	...	0	10	0
Attending Mr. C., and feeing him for further hearing	...	...	...	0	13	4
Paid his fee	...	...	...	7	7	0
Paid his clerk	...	...	...	0	7	0
6th. Attending Court all day, self and clerk, on further hearing of cause, when the judge pronounced the <i>Loreley</i> to blame for collision and in favour of defendants' counter-claim with costs	...	...	...	3	3	0
Paid stamps on production of witnesses	...	...	...	3	6	0
Notice to clients of result of hearing	...	...	...	0	3	6
Attending bespeaking, and afterwards obtaining final decree under seal	...	...	...	0	6	8
Paid for same	...	...	...	1	0	0
Copy for service on adverse solicitors	...	...	...	0	2	0

	Higher Scale.
	£ s. d.
Service thereof ... ..	0 2 6
Attending paying Trinity master's fees ... ..	0 13 4
Paid same ... ..	16 16 0
Term fee... ..	0 15 0

## FORM F.

*The Egbert.*

(Plaintiffs' cost of a reference before the registrar and merchants after the judge on the hearing had pronounced in favour of the plaintiffs' claim in an action for damage by collision. For proceedings up to hearing in this action see Form D.)

	Higher Scale.
	£ s. d.
1876.	
Dec. 7th.	
Instructions for claims ... ..	0 6 8
Drawing claim ... ..	0 8 0
Instructions for affidavit of C. C. in support of claim	0 6 8
Drawing and engrossing affidavit ... ..	0 5 4
Instructions for affidavit of D. T. in support of claim	0 6 8
Drawing affidavit ... ..	0 8 0
Engrossing same ... ..	0 2 8
Writing clients with affidavit to be sworn, and instructing them as to same ... ..	0 3 6

*Hilary Sittings.*

1877.	
Jan. Instruction for affidavit of Captain B. in support of claim ... ..	0 6 8
Drawing affidavit ... ..	1 0 0
Engrossing same ... ..	0 6 8
12th. Attending deponent to be sworn thereto ... ..	0 6 8
Paid oath and three exhibits ... ..	0 4 6
23rd. Engrossing claim ... ..	0 2 8
Copy for adverse solicitors ... ..	0 2 8
Perusing and considering exhibits to affidavit of Captain B. ... ..	0 7 4
Copy for use of cause ... ..	0 7 4
Copy affidavit and exhibits for adverse solicitors ... ..	0 13 8
Copy affidavit of N. B. for adverse solicitors ... ..	0 1 4
The like of L. B. ... ..	0 1 4
The like of C. C. ... ..	0 1 4
The like of J. P. ... ..	0 2 0
Perusing and considering exhibits to affidavit of J. P. W. ... ..	0 2 4
Copy for use of cause ... ..	0 2 4
Copy affidavit and exhibits for adverse solicitors ... ..	0 5 0
Copy affidavit of F. W. for adverse solicitor ... ..	0 3 0

					Higher Scale.		
					£	s.	d.
The like of P. H.	...	...	...	...	0	3	0
The like of O. A.	...	...	...	...	0	3	0
Attending adverse solicitors, serving them with copy claim and proofs	...	...	...	...	0	2	6
Attending in the registry filing originals	...	...	...	...	0	6	8
Paid stamps thereon and copy...	...	...	...	...	1	4	0
26th. Attending adverse solicitors, when they served me with notice to produce bills of sale, original charter party, bills of lading, and all vouchers for repairs done to the <i>Stockholm</i> since her purchase by plaintiffs, and perusing same	...	...	...	...	0	6	8
Writing clients informing them of documents required to be produced by defendants, requiring them to let me have same	...	...	...	...	0	3	6
Feb. Attending adverse solicitors, informing them that the captain of the <i>Stockholm</i> would have to remain on shore until the reference had been heard, and requiring them therefore to consent to an early day for a reference, when they were to obtain instructions	...	...	...	...	0	6	8
Attending adverse solicitors, when they served me with copy summons to allow defendants further time for filing counter affidavits, and perusing same	...	...	...	...	0	1	8
8th. On receipt of letter from adverse solicitor stating that he would file counter affidavits in a week, and as to the amount alleged to have been paid for the <i>Stockholm</i> , writing in reply...	...	...	...	...	0	3	6
12th. Attending summons, order made for counter affidavits to be filed that day	...	...	...	...	0	6	8
Attending adverse solicitors, when they served me with two counter affidavits in opposition to claim, and perusing same	...	...	...	...	0	4	0
Preparing notice to place reference on list for hearing, and attending in the registry filing same	...	...	...	...	0	6	8
Paid stamp on notice and copy	...	...	...	...	0	11	0
Attending adverse solicitors in the registry, when the reference was appointed for the 23rd instant	...	...	...	...	0	6	8
23rd. Attending long reference before the registrar and merchants	...	...	...	...	4	4	0
Attending preparing reference fees	...	...	...	...	0	16	8
Paid same	...	...	...	...	15	15	0
24th. Notice of taking up and filing registrar's report, and serving same	...	...	...	...	0	4	0
Attending in the registry filing notice and original report...	...	...	...	...	0	6	8
Paid stamp on note	...	...	...	...	0	5	0
The like on original report and copy	...	...	...	...	1	2	0
Attending bespeaking, and afterwards obtaining, copy registrar's report	...	...	...	...	0	6	8
Paid for same under seal	...	...	...	...	0	6	8
Perusing and considering report	...	...	...	...	0	6	8

	Higher Scale		
	£	s.	d.
Instructions not to object to report ... ..	0	6	8
Attending adverse solicitors calculating and agreeing amount of interest payable ... ..	0	6	8
Drawing affidavit of increase ... ..	0	8	0
Engrossing same ... ..	0	2	8
Attending deponent to be sworn thereto, and paid oath ... ..	0	8	2
Copy affidavit for adverse solicitors ... ..	0	2	8
Paid stamp on affidavit... ..	0	2	0
Drawing bill of costs ... ..	3	9	0
Copy for registrar ... ..			
Copy for adverse solicitors ... ..			
Perusing and considering agents' expenses ... ..	0	2	8
Copy for adverse solicitors ... ..	0	2	8
Copy for use of cause ... ..	0	2	8
Attending adverse solicitors with bill of costs for taxation ... ..	0	2	6
Attending taxation ... ..	1	11	6
Paid stamps ... ..	7	7	0
Attending agreeing costs as taxed ... ..	0	6	8
Attending adverse solicitors obtaining cheque for damages, interest, and taxed costs, and giving receipt and stamp ... ..	0	8	5
Sittings fee ... ..	0	15	0
Postages, &c. ... ..	0	7	6

## FORM G.

*The Annie Webster.*

(Defendant's costs of a reference before the registrar after the judge on the hearing had pronounced in favour of defendant's counter-claim in an action for damages by collision.)

	Lower Scale		
	£	s.	d.
1876.			
Aug. 10th. Having received letter from adverse solicitors stating that claim must go before the registrar, attending in the registry filing claim ... ..	0	6	8
Paid stamps thereon and on copy ... ..	0	11	0

*Michaelmas Sittings.*

November 6th. Preparing notice to place reference on list for hearing, and attending in the registry filing same ... ..	0	6	8
Paid stamp ... ..	0	10	0
Attending adverse solicitors in the registry, when the reference was appointed for the 17th instant ... ..	0	6	8
Notice thereof to clients ... ..	0	3	6

BILLS OF COSTS.

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	Lower Scale.		
	£	s.	d.
Attending Mr. A., shipbuilder, and arranging for his attendance at reference without a subpoena ...	0	3	6
The like Mr. B., shipwright ... ..	0	3	6
The like Mr. C., superintendent at Northumberland graving docks ... ..	0	3	6
The like Mr. A., shipbuilder ... ..	0	3	6
11th. On receipt of notice, writing clients that reference had been altered to 16th instant ... ..	0	3	6
Notice to Mr. A. ... ..	0	3	6
Notice to Mr. B. ... ..	0	3	6
Aug. 16th. Attending long reference before registrar and merchants ... ..	3	3	0
Attending paying reference fees ... ..	0	16	8
Paid same ... ..	15	15	0
Paid stamp on production of witnesses ... ..	1	2	0
Paid Mr. A. his expenses ... ..	2	2	0
The like Mr. B. ... ..	1	1	0
17th. Drawing and engrossing notice of taking up and filing registrar's report ... ..	0	3	4
Copy for adverse solicitors, and attending serving them therewith ... ..	0	3	6
Attending in the registry filing notice and original report ... ..	0	6	8
Paid stamp on notice ... ..	0	5	0
The like on original report and copy ... ..	1	1	0
Attending bespeaking and afterwards obtaining office copy registrar's report ... ..	0	6	8
Paid for same under seal, and collating ... ..	0	5	6
Perusing and considering report ... ..	0	6	8
Instructions not to object to report ... ..	0	6	8
Attending adverse solicitors calculating and agreeing amount of interest payable... ..	0	6	8
Attending adverse solicitors obtaining cheque for damages and interest, and giving receipt and stamp	0	6	9
Drawing affidavit of increase ... ..	0	15	0
Engrossing same ... ..	0	5	0
Attending deponent to be sworn thereto and paid oath ... ..	0	8	2
Copy affidavit for adverse solicitors ... ..	0	5	0
Paid stamp thereon ... ..	0	2	0
Drawing general bill of costs ... ..	3	10	0
Copy for the registrar ... ..			
Copy for adverse solicitors ... ..			
Perusing and considering outport expenses... ..	0	3	4
Copy for adverse solicitors ... ..	0	3	4
Copy for the registrar ... ..	0	3	4
Attending adverse solicitors, serving them with bill of costs for taxation ... ..	0	2	6
The like attendance in the registry ... ..	0	3	4
Attending taxation ... ..	1	6	8
Paid stamps ... ..	2	15	0

	Lower Scale		
	£	s.	d.
Attending agreeing costs as taxed ... ..	0	6	8
Attending adverse solicitors, obtaining cheque for taxed costs, and giving receipt and stamp ... ..	0	6	9
Sittings fee ... ..	0	15	0
Postages, &c. ... ..	0	7	6

## FORM H.

*The Transit.*

## (Bill of Costs in the Court of Appeal) (a).

	Higher Scale		
	£	s.	d.
1876.			
March 29th. Attending Mr. W. in conference, when he informed us that he was determined to appeal, and taking instructions to proceed with the appeal accordingly ... ..	1	1	0
30th. Attending the shorthand writer for and obtaining transcript of judgment ... ..	0	6	8
Drawing and engrossing notice of appeal ... ..	0	10	0
Drawing and engrossing notice of motion to stay proceedings, and reverse judgment of the Court below	0	5	0
Copy for adverse solicitors, and attending serving them therewith ... ..	0	4	6
Attending filing notice of motion and notice of appeal ... ..	0	6	8
Paid stamp thereon ... ..	0	10	0
April 3rd. Drawing case to support motion to stay proceedings ... ..	0	13	4
Copy for counsel ... ..	0	6	8
Attending Mr. P. therewith, and feeing him to attend motion... ..	0	6	8
Paid his fee and clerk ... ..	2	4	6
4th. Attending motion in Court, when the judge refused at present to stay execution, but made an order as to the documents to be printed, and ordered our parties to give security for the costs of the appeal ... ..	0	13	4
Copy order and service on adverse solicitor... ..	0	4	6
Paid shorthand writer for transcript of judgment (b)	15	18	8
Copy of the judgment for the official reporter of the Court ... ..	0	5	0

(a) The party for whom judgment is pronounced in the Court of Appeal being generally entitled to be paid his costs in the Court below as well as in the Court of Appeal, the actual bill of costs as taxed after an appeal consists of both sets of costs. But it is only necessary for the purposes of this precedent to set out so much of the costs as relate to the appeal.

(b) This sum must not be regarded as a precedent, it included more than the actual judgment, and was allowed only on account of a special agreement between the parties.

BILLS OF COSTS.

545

	Higher Scale.		
	£	s.	d.
Attending him therewith, and feeing him to settle judgment ... ..	0	6	8
Paid his fee and clerk ... ..	2	4	6
13th. Writing Messrs. S. & Co. as to security for costs	0	3	6
20th. Attending obtaining receivable order for £200 to be paid into Court as security for costs of appeal	0	6	8
Paid stamp thereon ... ..	0	2	6
Attending at the Bank of England paying in amount of tender and obtaining receipt ... ..	0	6	8
Drawing and engrossing notice of payment into Court ... ..	0	3	4
Copy notice for adverse solicitors, and attending serving them therewith ... ..	0	4	0
Attending filing notice of payment and receipt ...	0	6	8
Paid stamps thereon ... ..	0	6	0
22nd. Attending the adverse solicitors in conference, going through the papers with them, and agreeing on the documents to be included in the record ...	0	13	4
Attending filing the evidence... ..	0	6	8
Paid stamps thereon ... ..	4	10	0
25th. Copy record for the printer ... ..	9	0	0
Drawing and engrossing index thereto ... ..	0	17	0
26th. Correcting proof sheets of record ... ..	4	9	6
May 1st. Perusing and considering the record, and instructions for brief ... ..	8	19	0
Attending at the Court of Appeal with copies of record, and setting down appeal ... ..	0	6	8
Paid fee thereon ... ..	1	1	0
3rd. Drawing brief ... ..	4	4	0
Two copies thereof for counsel ... ..	2	16	0
Two copies of the record for counsel... ..	13	8	6
Attending Mr. B., Q.C., with brief, and feeing him for the hearing of the appeal ... ..	2	2	0
Paid his fee and clerk ... ..	80	12	6
Attending Mr. P. with brief and feeing him ... ..	2	2	0
Paid his fee and clerk ... ..	53	15	0
Attending Mr. B., Q.C., and feeing him for a consultation ... ..	0	6	8
Paid his fee and clerk ... ..	2	9	6
The like attendance upon Mr. P. ... ..	0	6	8
Paid his fee and clerk ... ..	1	3	6
4th. Attending searching cause list when we found that the Court would not take Admiralty appeals after to-morrow, and that the hearing must therefore stand over for a considerable time ... ..	0	6	8
16th. Attending consultation with counsel ... ..	0	13	4
17th. Attending hearing of appeal, when after hearing counsel the Court adjourned until the following day ... ..	2	2	0
Attending Mr. B., Q.C., paying his refresher fee for the further hearing ... ..	0	13	4

N N

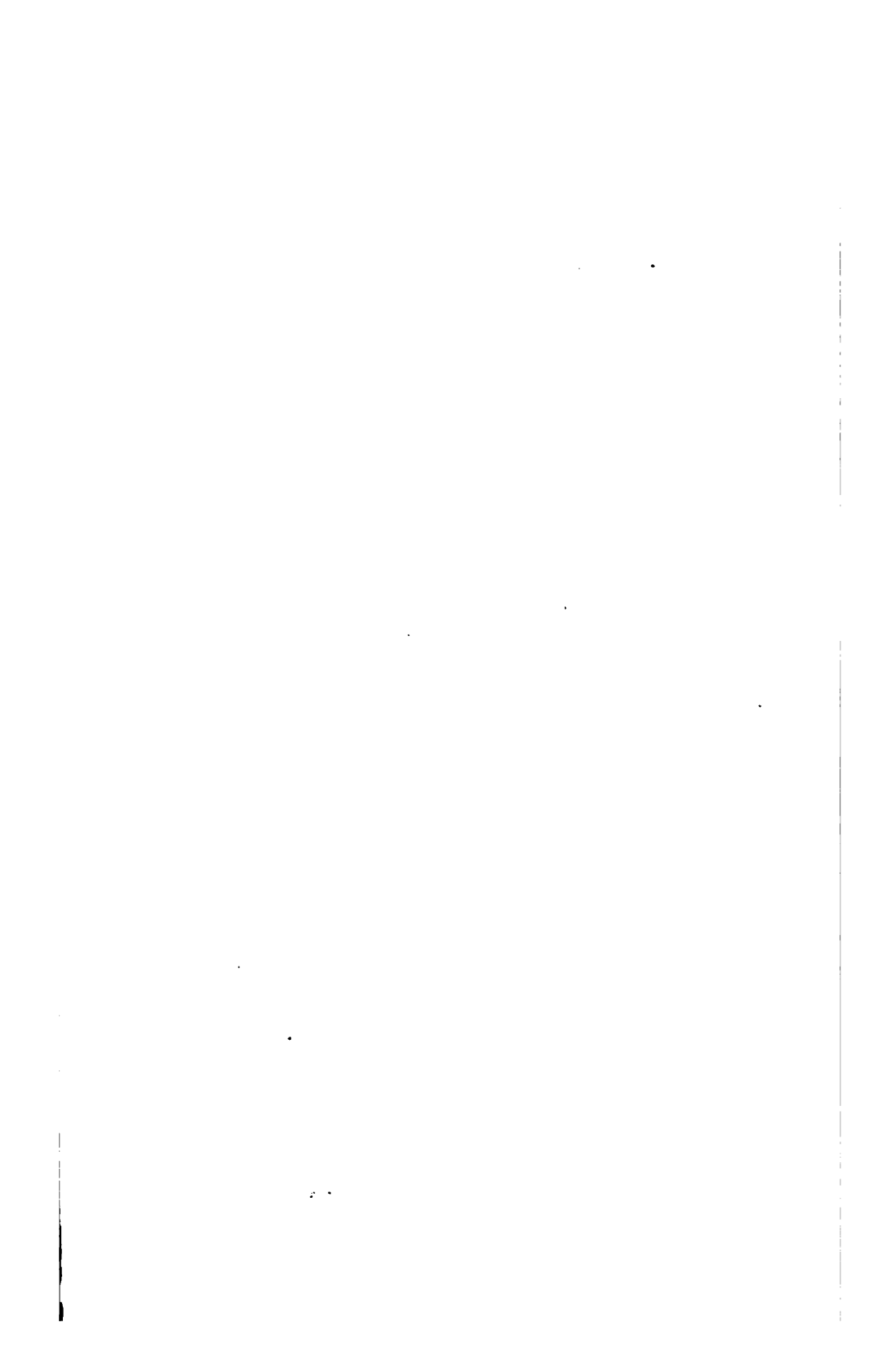


	Higher Scale
	£   s   d.
Paid for his fee and clerk ... ..	11 0 0
The like attendance on Mr. P. ... ..	0 13 4
Paid his fee and clerk ... ..	7 17 0
18th. Attending the further hearing of the appeal when the Court reserved judgment ... ..	2 2 0
27th. Attending Mr. B., Q.C., seeing him to attend the judgment ... ..	0 6 8
Paid his fee and clerk ... ..	2 4 6
The like attendance on, and fee to Mr. P. ... ..	1 10 2
29th. Attending Court when the <i>Glannibanta</i> was pro- nounced solely to blame for the collision, and the decision of the Court below was reversed, and the respondents were condemned in damages and in costs in both Courts ... ..	1 1 0
Term fee, letters, &c. ... ..	0 15 0
June 3rd. Attending in the registry, bespeaking and obtaining decree ... ..	0 6 8
Paid for same ... ..	0 10 0
Copy for adverse solicitors ... ..	0 3 4
Attending serving them therewith ... ..	0 2 6
July 18th. Paid account received from Messrs. H., of Ramagate, for securing the attendance of Man- thorpe, serving him with subpoena, and providing a substitute for him during his absence, and their charges ... ..	8 19 3
Terms for letters, &c. ... ..	0 15 0
Postage and other disbursements ... ..	0 10 0
1877. May 24th. Attending on the account in the registry, looking up the books, and ascertaining the amount of the net proceeds now in Court of the sale of the <i>Transit</i> ... ..	0 6 8
Summons to direct amount of the proceeds of sale to be paid to Mr. W. ... ..	0 6 8
Paid issuing ... ..	0 3 0
Copy summons for registrar ... ..	0 2 0
Copy and service on adverse solicitors ... ..	0 4 6
29th. Attending our summons when order was made subject to a declaration of the satisfaction of the salvage action being filed ... ..	0 6 8
Paid for order ... ..	0 5 0
Copy and service on adverse solicitors ... ..	0 3 6
June 12th. Paid poundage, and for preparing receipt ... ..	1 2 7
Paid stamp on judge's order for payment ... ..	0 5 0
Attending in the registry with Mr. W. on his re- ceiving the amount and signing receipt ... ..	0 6 8
Attending filing judge's order and receipt ... ..	0 6 8
July 2nd. Summons for payment out of money paid into Court as security for costs ... ..	0 6 8
Copy for the registrar ... ..	0 2 0
Paid issuing ... ..	0 3 0
Copy and service ... ..	0 4 6

BILLS OF COSTS.

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		Higher Scale.		
		¢	¢	¢
Attending summons when order made	... ..	0	6	8
Paid for order	... ..	0	5	0
Copy and service	... ..	0	3	6
Paid poundage fees, and for receipt	... ..	2	12	7
Paid stamp on judge's order for payment	... ..	0	5	0
Attending receiving the amount, and signing receipt	... ..	0	6	8
Attending filing judge's order and receipt	... ..	0	6	8



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